No. 918

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

EVANSTON CAB CO., A corporation,
SKOKIE RED TOP CAB CO., A corporation,
LINCOLNWOOD RED TOP CAB CO., A corporation,
Petitioners,

vs.

CITY OF CHICAGO, A Municipal Corporation,
YELLOW CAB CO., A Corporation,
CHECKER TAXI, INC., A corporation,
FLASH CAB CO., A corporation,
PUBLIC TAXI SERVICE, INC., A corporation,
ABERNATHY TAXI ASSOCIATION INC., A corporation,
SOUTH SIDE CAB CO., A corporation,
HIGHLAND CAB COMPANY, INC., A corporation,
COMMERCIAL CAB CO., A corporation,
BERTEL W. DAIGRE,
AMERICAN UNITED CAB ASSOCIATION, an incorporated Association,
JACK TAYLOR, individually and as President of the Defendant American United Cab Association,
PETE BARBERO, individually and as Secretary of the Defendant American United Cab Association,
JOHN C. MELANIPHY,
JAMES Y. CARTER,
RAY SIMON,
THOMAS J. COONEY,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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RAY SIMON,
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PETITION FOR WRIT OF CERTIORARI

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on December 18, 1963.

Citations to Opinions Below

The opinion of the United States Court of Appeals, printed in Appendix A hereto, *infra* App. p. 1, is reported at 325 F. 2d 907.

Jurisdiction

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on December 18, 1963. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

Questions Presented

Whether a restraint of trade in and monopolization of taxicab service at Chicago-O'Hare International Airport is in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C., Sections 1 and 2; where that airport is the primary interstate airport in an area containing 6,700,000; and where all deplaning passengers must take some further transportation in order to arrive at their final destinations in the Chicago Metropolitan Area; and where a stoppage or other restraint, burden or monopolization of taxicab service would result in a substantial interruption to or interference with the free flow of commerce.

2. Does an ordinance of the City of Chicago which requires a corporate applicant for taxicab licenses to have its principal place of business within the City of Chicago, and which thus prevents a non-resident corporation from obtaining City of Chicago taxicab licenses, deny to such non-resident corporations due process of law and the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Statutes Involved

The statutes involved are Sections 1 and 2 of the Sherman Act, 15 U.S.C., Sections 1 and 2; Sections 4 and 16 of the Clayton Act, 15 U.S.C., Sections 15 and 26; and Municipal Code of Chicago, Chapter 28, Sections 28-1, 28-2, 28-3, 28-5, 28-5.1, 28-6 and 28-32. The foregoing statutes are reprinted in full in Appendix B hereto, *infra* App. p. 13.

Statement of the Case

The petitioners filed a suit in the United States District Court for the Northern District of Illinois, Eastern Division, seeking monetary damages and injunctive relief against the respondents for violations of the Anti-Trust Laws of the United States. Jurisdiction of the District Court was invoked because the case arises under Sections 4 and 16 of the Clayton Act. (15 U.S.C., Sections 15 and 26.) The opinion of the Court of Appeals fairly adequately summarizes the facts of the case:

> Evanston Cab Co., Skokie Red Top Cab Co., and Lincolnwood Red Top Cab Co., Illinois corporations, plaintiffs, brought an action against the City of Chicago, a municipal corporation, defendant, and the other defendants above-named, in the district court, under the Clayton Act, 15 U.S.C.A. §§ 15, 26, and the Sherman Act, 15 U.S.C.A. §§ 1, 2.[1]
>
> On motion of defendants, the action was dismissed at plaintiffs' costs. This appeal followed.

[1] The last four defendants named are respectively the following officials of the City of Chicago: corporation counsel, public vehicle license commissioner, aide to the mayor, and a police officer assigned to duty in the office of the Public Vehicle License Commissioner.

The relevant facts as shown by the pleadings we set out in condensed form.

Chicago-O'Hare International Airport is an airport owned by the defendant City of Chicago and is the primary scheduled airline airport for the Chicago Metropolitan area consisting of the counties of Cook, Lake, DuPage, McHenry, Kane and Will, in the State of Illinois, and the counties of Lake and Porter in the state of Indiana. O'Hare is twenty-three miles from downtown Chicago and until March 28, 1956 was not within the incorporated area of the City of Chicago. On that date it was annexed to the city. Physically it is completely separated from the rest of the corporate area of the city except for a connecting strip of Higgins Road and East River Road. All but a very small portion of passengers arriving at O'Hare in scheduled airline planes originate their flights outside the State of Illinois.

Plaintiffs are respectively engaged in the operation of taxicabs in the municipalities of Evanston, Skokie and Lincolnwood, in suburban Cook County.

The complaint alleges that 6,700,000 persons live in the Chicago metropolitan area and that all persons completing flights at O'Hare *engage* some form of *further* transportation to take them to their ultimate destination in the Chicago Metropolitan Area. To provide this further transportation the Chicago Helicopter airways has scheduled flights between O'Hare, Midway Airport, downtown Chicago, Gary, Indiana and Winnetka, Illinois. All other public transportation in interstate commerce of persons completing flights at O'Hare to their final destinations in the Chicago Metropolitan Area is by taxicab.[2]

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[2] In addition Continental Air Transport Co., Inc., operates bus service between O'Hare, Midway Airport, downtown Chicago, Evanston, Illinois and Oak Park, Illinois.

The complaint charges that defendant taxicab concerns and other defendants conspired among themselves and with others to eliminate and restrict competition in the providing of taxicab service at O'Hare, by ratifying a prior prohibition of the plaintiffs from providing taxicab service to persons traveling in interstate commerce completing their flights at O'Hare, and by agreeing to prohibit all persons from providing such service in the regular taxi line except the cab company defendants and other taxicabs licensed by the City of Chicago, and further agreed to permit the plaintiffs to render taxi service at O'Hare only when specifically contracted for by letter, telegram or telephone prior to rendering such service, thus placing the plaintiffs at a distinct competitive disadvantage.

The complaint further charges that the city council of defendant city enacted an ordinance effectuating said agreements and that it and certain other ordinances, copies of which are attached to the complaint, which limit plaintiffs in providing taxi service at O'Hare, are therefore unreasonable, discriminatory and deprive plaintiffs of their property without due process of law, contrary to the fourteenth amendment to the constitution of the United States.

The complaint further charges that the conspiracy and ordinance "actually restrain, burden and monopolize interstate commerce".

Plaintiffs seek recovery of damages for losses sustained by reason of the facts charged, relying on §§ 4 and 16 of the Clayton Act, 15 U.S.C.A. §§ 15, 26, and §§ 1 and 2 of the Sherman Act, 15 U.S.C.A. §§ 1, 2.

To substantiate the allegations of conspiracy to restrain trade and monopolize taxicab service at O'Hare Airport, the petitioners raised the question of the validity of the

Chicago Taxicab ordinance provisions which prohibit non-resident corporations from obtaining Chicago taxicab licenses and thus enhances the defendants monopoly. This portion of the case is identical with the question presented in *Yokes* v. *City of Chicago*, now before this Court on Appeal from the Supreme Court of Illinois, Case Number 855, October Term, 1963. In the *Yokes* case the appellants were drivers of two of the three taxicab companies which are the plaintiffs in this case.

The United States Court of Appeals affirmed the order of the District Court dismissing the complaint upon the authority of *United States* v. *Yellow Cab Co.*, 332 U.S. 218 (1947); and upheld the validity of the Chicago taxicab ordinance provisions upon the authority of *City of Chicago* v. *Yokes*, 28 Ill. 2d 475.

Reasons for Granting Writ

1. The first question presented in this case consists in part of the one which was recognized by the dissenters but which the Court left unanswered in *United States* v. *Employing Plasterers' Assn.*, 347 U.S. 186, and *United States* v. *Employing Lathers' Assn.*, 347 U.S. 198. That question is whether the "affects interstate commerce" test of the applicability of the antitrust laws is the same "affects interstate commerce" test which is applied under the Labor-Management Relations Act of 1947 (Taft-Hartley) 29 U.S.C., Section 14, or the Fair Labor Standards Act, 29 U.S.C., Sections 201, *et seq.* The first question presented also contains the one left unanswered by this Court in *United States* v. *Yellow Cab Co.*, 332 U.S. 218 when the Court said:

> * * * Likewise, we are not to be understood in this case as deciding that all conspiracies among local cab drivers are so unrelated to interstate commerce as to fall outside the federal ken. A conspiracy to burden or eliminate transportation of passengers to and from a railroad station where interstate journeys begin and end might have sufficient effect upon interstate commerce to justify the imposition of the Sherman Act and of other federal laws resting on the commerce power of Congress.

The Court of Appeals' reliance upon the more restrictive provisions of the *Yellow Cab* case clearly evidences its refusal to expand the antitrust laws into the areas which this Court indicated did come under them; *i.e.* the case in which taxicab service at one major terminal of interstate transportation is monopolized or restrained. The Court of Appeals ignored that portion of the *Yellow Cab* case and decided this case as general local taxicab service.

Thirdly there is presented the broad question as to whether the Yellow Cab doctrine, establishing the lack of applicability of the federal anti-trust laws to local taxicab service, has been or should be overruled.

All three aspects of the first question present important questions of federal law which have not been, but should be, settled by this Court.

The *Yellow Cab* case has been if not expressly overruled at least impliedly in the case of *United States* v. *Employing Plasterers' Assn.*, 347 U.S. 186, 74 S. Ct. 452, 98 L.Ed. 618 and *United States* v. *Employing Lathers' Ass'n.* 347 U.S. 198, 74 S. Ct. 455, 98 L.Ed. 627. In the *Plasterers'* case Mr. Justice Black, speaking for the Court said: (74 S. Ct. 452, 454.)

> . . . [T]he complaint alleged that continuously since 1938 a local group of people were to a large extent able to dictate who could and who could not buy plastering materials that had to reach Illinois through interstate trade if they reached there at all. Under such circumstances it goes too far to say that the Government could not possibly produce enough evidence to show that these local restraints caused unreasonable burdens upon the free and uninterrupted flow of plastering materials into Illinois. That wholly local business restraints can produce the effects condemned by the Sherman Act is no longer open to question. See, e.g. *United States* v. *Women's Sportswear Manufacturers Ass'n.* 336 U.S. 460, 464, 69 S. Ct. 714, 93 L. Ed. 805.

In the *Lathers* case Mr. Justice Black, again speaking for the Court said: (74 S. Ct. 455, 456.)

> The complaint charges that an effect of the alleged combination and conspiracy has been that "'[i]nterstate trade and commerce in lathing and related building materials has been unlawfully restrained.'" Other

allegations emphasize this charge by asserting that any restraint upon lathing work in Chicago "necessarily and directly restrains and affects the interstate flow of lathing materials, and * * * building materials * * *."

The complaint does state a cause of action on which relief can be granted on proper proof.

The full import of these two decisions is pointed up in the dissent of Mr. Justice Minton with whom Mr. Justice Douglas concurred: (74 S. Ct. 457)

> The government does not and could not contend that building is commerce. It contends that the appellee's act affect commerce relying upon such cases as *National Labor Relations Board* v. *Denver Building & Const. Trades Council*, 341 U.S. 71 S. Ct. 943 95 L. Ed. 1284, and *Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564, 63 S. Ct. 332, 87 L. Ed. 460. But those cases arose under different statutes, the sweep of which is broader than that of §1 of the Sherman Act, which declares illegal only those contracts, combinations and conspiracies "in restraint of trade or commerce among the several States." The *Denver Council* case arose under the Labor Management Relations Act, 29 U.S.C. § 151 *et seq.*, which provides:
>
> > "Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce: * * *" 61 Stat. 146, 29 U.S.C. § 160, (a) 29 U.S.C.A. § 160(a).
>
> Section 2 of that Act defines "affecting commerce" as follows:
>
> > "(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." 61 Stat. 138, 29 U.S.C. § 152(7), 29 U.S.C.A. § 152(7).

The *Jacksonville Paper* case arose under the Fair Labor Standards Act, 29 U.S.C.A. § 201 *et seq.*, which is applicable to "employees who [are] engaged in commerce or in the production of goods for commerce • • • •." 52 Sat. 1062, 29 U.S.C. § 206, 29 U.S.C.A. § 206. Furthermore, that case dealt with transactions that took place in the stream of commerce. Compare *Higgins* v. *Carr Bros.*, 317 U.S. 572, 63 S. Ct. 337, 87 L. Ed. 468. In the instant cases the stream of commerce stops at the building site.

It is apparent from the reading of the opinions of the *Plasterers* case and the *Lathers* case that the test of the applicability of the Sherman Act is whether the activity complained of affects commerce. This test is not wholly lacking in the *Yellow Cab* case itself, for there the Court made clear: (67 S.Ct. 1560, 1568)

> We do not mean to establish any absolute rule that local taxicab service to and from railroad stations is completely beyond the reach of federal power or even beyond the scope of the Sherman Act. In *Stafford* v. *Wallace*, *supra*, 258 U.S. at page 528, 42 S. Ct. at page 406, 66 L. Ed. 735, 23 A.L.R. 229, the Court made plain that nothing in the *Knight* case was authority for the proposition that "if such an agency [local cab service] could be and were used in a conspiracy unduly and constantly to monopolize interstate passenger traffic, it might not be brought within federal restraint." Likewise, we are not to be understood in this case as deciding that all conspiracies among local cab drivers are so unrelated to interstate commerce as to fall outside the federal ken. A conspiracy to burden or eliminate transportation of passengers to and from a railroad station where interstate journeys begin and end might have sufficient effect upon interstate commerce to justify the imposition of the Sherman Act and of other federal laws resting on the commerce power of Congress.

The completion of the extinction of the *Yellow Cab* case as controlling in this area was accomplished with little fanfare in a *per curiam* order of this Court in *Superior Court of State of Washington for King County* v. *State of Washington on the Relation of Yellow Cab Service, Inc.*, 361 U.S. 373.

The prelude to this order, in a case in which not only was certiorari granted 360 U.S. 928 but the Solicitor General invited to file a brief setting forth the views of the National Labor Relations Board, 361 U.S. 862, was the opinion of the Supreme Court of Washington in *State of Washington on the Relation of Yellow Cab Service* v. *The Superior Court for King County*, 53 Wash. 2d 644. To establish its full import we quote the following pertinent passages:

> This is an application for a writ of mandate sought by the relator, Yellow Cab Service, Inc., a Washington corporation, to direct the superior court of King County to take jurisdiction of its action against the International Brotherhood of Teamsters (hereinafter referred to as the union) to enjoin the picketing of its premises. The union successfully attacked the superior court's jurisdiction over the relator's action on the ground that the only proper forum was the National Labor Relations Board.
>
> . . . . . .
>
> The merits of this case were never determined in the superior court, due to that court's decision that it did not have jurisdiction to proceed with the case. The superior court decided that the Yellow Cab system was in interstate commerce and that the case presented a labor dispute affecting interstate commerce over which the National Labor Relations Board would have jurisdiction. Relying on *Guss* v. *Utah Labor Relations Board* (1957), 353 U.S. 1, 1 L. Ed. 2d 601, 77

S. Ct. 598, the superior court held that the federal jurisdiction over this case was exclusive and pre-empted the state court's jurisdiction.

The National Labor Relations Act empowers the National Labor Relations Board "to prevent . . . any person from engaging in any unfair labor practice . . . affecting commerce." 49 Stat. 453, 29 U.S.C.A. § 160 (a). The definition of the term "affecting commerce" is given as follows, at Stat. 450, 29 U.S.C.A. § 152(7):

> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The Yellow cabs are based in the City of Seattle and operate almost entirely within King county. In order to establish that they are in interstate commerce, the union relies upon the buisness these taxicabs do in picking up and delivering passengers at the railroad terminals, airports, and passenger steamship docks. The total gross revenues received by all of the hundred and eighteen taxicab operating corporations from July 1, 1957, through June 30, 1958, was $1,429,914.02. Gross revenues received from picking up passengers from the Seattle airports were $144,460.80 from Seattle-Tacoma Airport and $14,601.60 from King County Airport (Boeing Field). An estimate was made at the trial that this constituted seventy per cent of the full business of these taxicabs in serving these airports. The remaining thirty per cent involving trips to the airports. Not all of these gross revenues came from passengers traveling interstate, however it appears that a substantial portion did.

No similar accounting was made concerning the gross revenues derived from servicing the railroad terminals or the passenger steamship docks, except

for a relatively few passengers who on prearranged tours, arrived at railroad terminals and took taxicabs directly to the Canadian Pacific docks, paying their taxicab fare by coupon. The gross revenues from the coupons received from these travelers totalled just $1,436.55 during the accounting year (approximately one tenth of one per cent of the gross revenues).

A taxicab company having relatively the same scope of business was considered by the Supreme Court of the United States in *United States* v. *Yellow Cab Co.* (1947), 332 U.S. 218, 91 L. Ed. 2010, 67 S. Ct. 1560. That case concerned the sufficiency of a complaint brought under the Sherman Antitrust Act, involving, among other things, monopolistic practices in the Chicago taxicab fleet. The court held that the Sherman Act did not apply to the Chicago taxicab business because this manner of transportation was too predominantly a local activity to constitute an integral part of interstate commerce. The court held that,

> "... When local taxicabs merely convey interstate train passengers between their homes and the railroad stations in the normal course of their independent local service, that service is not an integral part of interstate transportation. ..." 332 U.S. at 233.

The task of drawing the line which bounds interstate commerce is anything but simple. *United States* v. *Yellow Cab Co., supra*, has drawn such a line, however, and we consider its holding to be an appropriate authority for the position we here take.

At this point the court interjected the following footnote:

> That *United States* v. *Yellow Cab Co., supra*, was decided under the Sherman act does not make it less an authority in the instant case. In that case, as in this one the issue was whether there was any appreciable aspect of interstate commerce involved in the city's taxicab business. ...

Quoting one last pertinent paragraph from the decision of the Supreme Court of Washington:

> We do not believe that whatever unfair labor practice may be present in this case can possibly be said to be "burdening or obstructing commerce" (see 49 Stat. 450, 29 U.S.C.A. §152(7), quoted above). There is no testimony in the record that this picketing has impaired taxicab service to or from the railroad terminals, airports, and docks, and hence no evidence of any effect upon interstate commerce sufficient to justify the application of the National Labor Relations Act. *United States* v. *Yellow Cab Co.*, *supra*. No such circumstances is present in this case.

In answer to all of the above language the Supreme Court of the United States merely said: (361 U.S. 373)

> The judgment is reversed. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236.

The *Garmon* case is one of a series of cases in which this Court was faced with the problems created by the failure of the National Labor Relations Board to take jurisdiction in labor disputes in industries which affect interstate commerce. The background was expressed in *Guss* v. *Utah Labor Relations Board*, 353 U.S. 1, 3, 4, 77 S. Ct. 598, 599, 1 L.Ed. 2d 601.

> Some background is necessary for an understanding of this problem in federal-state relations and how it assumed its present importance. Since it was first enacted in 1935, the National Labor Relations Act has empowered the National Labor Relations Board "to prevent any person from engaging in any unfair labor practice * * * [defined by the Act] affecting commerce." By this language and by the definition of "affecting commerce" elsewhere in the Act, Congress meant to reach to the full extent of its power under the Commerce Clause. *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 606-607, 59 S. Ct. 668, 672,

83 L. Ed. 1014. The Board, however, has never exercised the full measure of its jurisdiction. For a number of years, the Board decided case-by-case whether to take jurisdiction. In 1950, concluding that "experience warrants the establishment and announcement of certain standards" to govern the exercise of its jurisdiction, *Hollow Tree Lumber Co.*, 91 N.L.R.B. 635, 636, the Board published standards, largely in terms of yearly dollar amounts of interstate inflow and outflow. In 1954, a sharply divided Board, see *Breeding Transfer Co.*, 110 N.L.R.B. 493, revised the jurisdictional standards inward. This Court has never passed and we do not pass today upon the validity of any particular declination of jurisdiction by the Board or any set of jurisdictional standards.

How many labor disputes the Board's 1954 standards leave in the "twilight zone" between ex[illegible] federal jurisdiction and unquestioned state jurisdiction is not known. In any case, there has been recently a substantial volume of litigation raising the question stated at the beginning of this opinion, of which this case is an example.

Decided the same day as the *Guss* case was the predecessor of the *Garmon* case relied upon by the Court in the case of *Superior Court of State of Washington etc.* In the first *Garmon* case, *San Diego Building Trades Council v. Garmon*, 353 U.S. 26, 77 S.Ct. 607, 1 L.Ed.2d 618, there was no doubt that the business involved affected interstate commerce. In fact the plaintiff in that case was the employer who commenced the action to enjoin the union from picketing on the basis that the employer was in interstate commerce and the contract sought by the unions would violate the National Labor Relations Act. Following the *Guss* case this Court held that the employer was in the so-called twilight zone wherein the labor relations were solely controlled by Congress but wherein the NLRB refused to accept jurisdiction. The Court reversed the de-

cision of the state court granting an injunction against the picketing, holding that the jurisdiction in the NLRB was exclusive, regardless of whether they exercised that jurisdiction or not. The Court remanded the case to the state court for the purpose of determining whether the damages which had also been awarded the employer were based on state or Federal grounds. The state court determined the damages were awarded under state tort law. Again certiorari was granted and upon the merits the Supreme Court decided that as to the issue of damages the Federal Act had also pre-empted the field of labor relations in a business affecting interstate commerce.

By holding that the state courts were powerless to determine whether an unfair labor practice existed or to remedy it if it did and by relying on *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 77 S. Ct. 598, 1 L. Ed. 2d 601, *Amalgamated Meat Cutters, etc.* v. *Fairlawn Meats*, 353 U.S. 20, 77 S. Ct. 604, 1 L. Ed. 2d 613, and *Garner* v. *Teamsters, etc. Union*, 346 U.S. 485, 74 S. Ct. 161, 98 L. Ed. 228, the Court clearly inferred in the *Garmon* case that it was only because the business involved affected interstate commerce that the state courts had no jurisdiction.

Returning to the *Superior Court of State of Washington for King County* v. *State of Washington on the Relation of Yellow Cab Service, Inc.*, 361 U.S. 373, 80 S.Ct. 400, we at once see that the Supreme Court of Washington could not have been reversed on the basis of the second *Garmon* case had not the business involved affected interstate commerce.

Even closer to the business involved in this case is the adjudication by the National Labor Relations Board in *Checker Taxi Company, Inc.*, 131 N.L.R.B. 611. There the Board without comment adopted the finding of the trial examiner that Checker Taxi Company, Inc., and Yellow Cab

Company, which are the same companies as are respondents in this case, are engaged in commerce within the meaning of the National Labor Relations Act. The following extract from the trial examiner's report is most appropriate to the present case: 131 N.L.R.B. 611, 636.

FINDINGS OF FACT

I. The Business of the Respondents Checker and Yellow

The Respondent Yellow is a Maine corporation, having its principal office and place of business in Chicago, Illinois, where it is engaged in the business of transporting the general public for hire in taxicabs. The complaint contends and the answer admits that during the calendar year 1958 the Respondent Yellow: (1) Purchased and received in Illinois vehicles, gasoline and related products valued at more than $1,500,000 which were shipped directly from points outside the State of Illinois; and (2) during the same period received revenue in excess of $1,000,000 from the general public using its facilities.

The Respondent Checker is a New York corporation, having its principal office and place of business in Chicago, Illinois, where it is engaged in the business of transporting the general public for hire in taxicabs. The complaint contends and the answer admits that during the calendar year 1958 Respondent Checker: (1) Purchased and received in Illinois vehicles, gasoline and related products valued at more than $1,000,000 which were shipped directly from points outside Illinois; and (2) during the same period received revenue of more than $1,000,000 from the general public using its facilities.

Without more, in the opinion of the Trial Examiner, the Board's jurisdictional requirements as to each of the Respondent Companies have been met. Contrary to the contentions of the Respondents, it is concluded and found that said Respondents are engaged in commerce within the meaning of the Act and that, as the

> court said in *N.L.R.B.* v. *Baltimore Transit Company, et al.*, 140 F. 2d 51 (C.A. 4), a "stoppage of its [their] operations by threatened industrial strife would result in substantial interruption to or interference with the free flow of commerce."

In sum, then, taxicab industry in the Chicago Metropolitan Area as is alleged in the complaint does have a substantial effect upon interstate commerce.

The question thus raised is whether that test, *i.e.* affecting interstate commerce, brings the activities involved within the scope of the Sherman and Clayton Acts. As the dissents in the *Employing Plasterers* and *Employing Lathers* cases, pages 9 and 10 *supra*, clearly demonstrate, that is the holding of those cases, if not directly stated. An analysis of several antitrust cases also shows that that test is applicable. We have seen that the power of Congress to regulate commerce among the several states includes the power to regulate businesses in which a curtailing of their operations by such as a labor dispute would result in a substantial interruption to or interference with the free flow of commerce. The antitrust laws of the United States have been repeatedly construed in such a manner as to effectuate the intention of Congress to exercise its full power over interstate commerce. *U. S.* v. *Frankfort Distilleries*, 324 U.S. 293, 65 S.Ct. 661, 89 L.Ed. 951; *U. S.* v. *Southeastern Underwriters Ass'n*, 322 U.S. 533, 64 S.Ct. 1162, 88 L.Ed. 1440; *U. S.* v. *Chrysler Corp.*, 9 Cir., 180 F.2d 557. In *Atlantic Cleaners & Dyers* v. *United States*, 286 U.S. 427, 52 S.Ct. 607, 76 L.Ed. 1204, the Supreme Court said: (286 U.S. 427, 435)

> A consideration of the history of the period immediately preceding and accompanying the passage of the Sherman Anti-Trust Act and of the mischief to be remedied, as well as the general trend of debate in both

> houses, sanctions the conclusion that Congress meant to deal comprehensively and effectively with the evils resulting from contracts, combinations, and conspiracies in restraint of trade, and to that end to exercise all the power it possessed.

Thus, if industrial strife in the taxicab industry results in a substantial interruption to or interference with the free flow of commerce and Congress has the power to regulate labor disputes in that industry to prevent such strife, it must therefore follow that Congress also has the power to prevent a monopolization or contracts, combinations and conspiracies in restraint of trade in the taxicab industry which likewise would result in substantial interruption to or interference with the free flow of commerce. Congress having exercised all the power it possessed, the Sherman and Clayton Acts are applicable to the business involved in this case.

2. The second question which is raised by this petition is the one which is also raised in *Vokes v. City of Chicago*, Case Number 855, October Term, 1963.[3] Without wishing to burden the Court, we here present the arguments raised there in order to permit parties who are not parties in that case to answer them. In the jurisdictional statement in that case, the appellants, drivers for two of the three plaintiff companies showed that the present Chicago taxicab licensing ordinance is invalid because it discriminates nonresident corporations.

The Supreme Court of Illinois, in its decision in that case, ignored not only the great body of law from other jurisdictions but also its own precedents.

The leading Illinois case is *City of Elgin v. Winchester*, 300 Ill. 214; 133 N.E. 205. In that case the City of Elgin had enacted an ordinance which provided as follows:

> Section 1. It shall be unlawful for any person to distribute or carry for the purpose of distributing, or

> to post or carry for the purpose of displaying the same, any handbill or advertisement or advertising material of any kind within the city of Elgin without a license to do so.
>
> Section 13. No license shall be required hereunder for the purpose of advertising home entertainments or sales by citizens of the City of Elgin if the person desiring the same shall first obtain a permit from the mayor to do so.

In holding the ordinance invalid and reversing the conviction of the defendant in that case, a New York resident, the Court said:

> In our judgment, under the authorities, the ordinance is void as being discriminatory between residents and nonresidents as to the payment of license fees. A citizen of the city may procure a permit without the payment of a license fee, and distribute advertisements concerning sales by such citizens. Beyond question the ordinance permits local merchants to advertise by the distribution of circulars or pamphlets. A statute or ordinance which in imposing a license tax discriminates in favor of residents of a state or city and against non-residents of the same class is unconstitutional. (133 N.E. 205, 206)

In *Larson v. City of Rockford*, 371 Ill. 441, 21 N.E. 2d 396, the Supreme Court of Illinois had occasion to determine the validity of an ordinance of the City of Rockford which exacted license fees of persons maintaining and operating automatic vending machines for the sale of candy, peanuts, soft drinks, pop corn and gum. The ordinance required that persons to whom licenses were to be issued be either residents of the city or have a business address within the city. In holding that the ordinance was not discriminatory against nonresidents the Court said:

> The ordinance is not invalid because it requires licensees either to be residents of Rockford or to maintain a business address in that city. Arbitrary dis-

> crimination between residents and nonresidents in the issuance of licenses or fees charged will invalidate a municipal ordinance. (*City of Elgin* v. *Winchester*, 300 Ill. 214, 133 N.E. 205, 22 A.L.R. 1481), but the ordinance before us neither prohibits issuance of licenses to non-residents nor exacts a higher fee from non-residents than from residents. (21 N.E. 2d 396, 398)

The court went on to discuss the fact that a city could require a business address within the city for purpose of inspection and receiving customer complaints. It is thus seen that the Rockford ordinance was far different in its residence requirements than the ordinance before the Court in these cases.

Similar decisions are numerous. In *People* v. *Bowen*, 11 Misc. 2d 462, 179 N.Y.S. 2d 125, the Court of Special Sessions of the City of New York, Appellate Part, had before it the validity of a section of the New York City Administrative Code which prohibited the issuance of licenses for sightseeing guides unless the applicant had been a resident of New York City for two years. In reversing the conviction of the defendants who were residents of Pennsylvania and were conducting a tour which originated and terminated in Philadelphia, for acting as sightseeing guides without a license, the Court said:

> In *Wormser* v. *Moss*, 177 Misc. 49, 29 N.Y.S. 2d 798, the New York Supreme Court held that a law of the City of New York which restricted the granting of Masseur's licenses to persons who had been citizens of the United States for at least two years violated both the United States and the New York State Constitutions (U.S. Const. 14th Amend.; N.Y. Const. Art. 1, §§ 6, 11).
>
> In *Schrager* v. *City of Albany*, 197 Misc. 903, 99 N.Y.S. 2d 697, a city ordinance prohibited street vending without a license and only permitted the issuance of licenses to persons who had been residents of the

city for at least six months. The residence requirement was held to be manifestly unconstitutional and invalid since it works a discrimination against non-residents of the city * * *" (197 Misc. 903, at page 906, 99 N.Y.S. 2d 697, at page 700). The Court pointed out (197 Misc., page 906, 99 Misc. 2d page 700 "Regulations whose purposes are asserted to be in the public interest must be reasonable, adapted to cure a substantial evil and applicable to persons similarly situated. If they fail to meet those requirements courts have the duty to declare them unconstitutional."

Unless residence within a city presents a clear-cut reasonable basis for distinction between persons seeking to pursue the same occupation within the city, a requirement of residence as a prerequisite to practicing such occupation must fail. *Lang's Bakery* v. *City of Lockport*, 251 App. Div. 791, 298 N.Y.S. 167; *People* v. *Hervieux*, 134 Misc. 711, 236 N.Y.S. 129. Here we find no such basis; accordingly, we hold that the two years' residence requirement of Sec. B32-77.0 of the N. Y. City Administrative Code, as applied to these defendants, is invalid. *City of Watertown* v. *Rodenbaugh*, 112 App. Div. 723, 98 N.Y.S. 885. [175 N.Y.S. 2d 125, 127-128]

In *Jewel Tea Co. v. Town of Bel Air* (Md. Ct. of App. 1937) 192 A. 417 it was held that a court of equity could enjoin the enforcement of ordinances which prohibited unlicensed nonresidents from soliciting orders for sale of goods. The Court said:

Both ordinances, Nos. 39 and 74, are void because they discriminate in favor of the resident business, and thus violate the Fourteenth Amendment to the Federal Constitution. In support of such a decision it is only necessary to refer to the opinion of this court by Judge Offutt in *Havre De Grace* v. *Johnson*, 143 Md. 601, 123 A. 65, and the numerous cases digested in 61 A.L.R. 337. Discussion would be superfluous and repetitious.

In *Whipple v. City of South Milwaukee*, 261 N.W. 235, the Supreme Court of Wisconsin held invalid an ordinance of the City of South Milwaukee which in effect required a license to be obtained by hawkers and peddlers of non-resident businesses, in that case bakery and creamery firms. The ordinance did not require such a license of hawkers and peddlers of resident firms. The court went on at great length to analyze the various precedents but the following is indicative of the reasoning:

> Consequently, by reason of that exemption in favor of mercantile houses located in the city of South Milwaukee, the impediment or burden which it was proposed to impose by those prohibitory provisions upon the plaintiffs and others similarly situated, is not equally applicable to the pursuits of all engaged in the same acts under like circumstances and conditions. Therefore those provisions are discriminatory as against the plaintiffs and others similarly situated, and by reason of that discrimination, they are in violation of section 1, art. 1, Wis. Const., and section 1, Amend. 14, U. S. Const. By that amendment, as the court said in *Barbier v. Connolly*, 113 U.S. 27, 31, 5 S. Ct. 357, 359, 28 L. Ed. 923, it was "undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoilation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights": that, in respect thereto, "all persons should be equally entitled to pursue their happiness, and acquire and enjoy property," and "no impediment should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances"; and that "no greater burdens should be laid upon one than are laid upon others in the same calling and condition." Likewise, with that amendment and section 1, art. 1, Wis. Const., in mind, we said, in *Christoph v. City of Chilton*, 205 Wis. 418, 421, 237 N.W. 134, 135: "That both the Constitutions of the state of Wis-

consin and of the United States condemn laws which grant special privileges to a favored class, cannot be doubted. That the very spirit of our institutions is against the granting of special privileges to a favored class is indeed elementary." And also that: "While the legislature, in proper cases, clearly has the right to classify persons, property, occupations, or industries, it must always be borne in mind that the equal protection of the laws is guaranteed, and that, if any classification made by a statute grants to one class rights or privileges which are denied to another class under the same or substantially similar conditions, it offends against the principle of equal protection of the law."

The next case which we wish to call to the attention of the court is *City of New Brunswick v. Zimmerman*, 3 Cir., 1935, 79 F 2d 428. In that case the City of New Brunswick had an ordinance regulating barbers which provided that no application for a license to conduct a barber shop could be considered unless the applicant had been a resident of the County of Middlesex for a period of one year immediately preceding the making of the application. The District Court enjoined the enforcement of the ordinance and the city appealed. The United States Circuit Court of Appeals affirmed the District Court saying:

> The Fourteenth Amendment provides that no state shall make or enforce any law which abridges the privileges or immunities of citizens of the United States, nor deny them equal protection of the laws. It is our conclusion that the ordinance requirement as to residence had but one purpose, namely, that of discriminating in favor of residents of the county of Middlesex and citizens of the state of New Jersey and against nonresidents of the county and citizens of other states. We conclude that the ordinance requirement of one year's residence as a prerequisite to the right to conduct a barber shop within the county of Middlesex, state of New Jersey, is unreasonable, dis-

criminatory, and in direct violation of the Fourteenth Amendment to the Constitution of the United States. *Williams v. McCartan*, (D.C.) 212 F. 345. [79 F. 2d 428, 429]

The last and probably the closest case on the facts, is the opinion mentioned in the *Jewel Tea Co.* case discussed above, *Mayor and City Council of Havre de Grace* v. *Johnson*, (Md. Ct. of App., 1927), 133 Atl. 65. Because of its importance in this case we take the liberty of quoting at length from that opinion:

> The single question presented by this appeal is whether ordinance No. 298 of the city of Havre de Grace is a valid enactment.
>
> The ordinance is entitled:
>
> "An ordinance to regulate, control, and restrict the use of the streets, lanes, and alleys of the city of Havre de Grace by automobiles carrying passengers for hire,"
>
> —and was approved on August 27, 1922. In part it provides:
>
> "Section 1. Be it enacted and ordained by the mayor and city council of Havre de Grace, Maryland, that it shall be unlawful for any driver or operator of an automobile carrying passengers for hire (except as hereinafter provided), to solicit or accept passengers for transportation for hire on any of the streets, lanes and alleys of the city of Havre de Grace, except Union avenue and Revolution street west Union avenue.
>
> "Sec. 2. Be it further enacted and ordained that the provisions of this ordinance shall not apply to the operators or drivers of automobiles who are actual and bona fide residents of the city of Havre de Grace, and who have resided therein for a continuous period of six months."

The complainant contends that the ordinance was and is void, because it is unconstitutional and that that being true the police officials of Havre de Grace in executing it threatened to deprive him of rights or privileges granted by the state to him for which he had fully paid. He contended that he had no adequate legal remedy for such loss as he might sustain as a result of the defendants' acts, and he therefore asked that they be restrained from—

"interfering with, arresting and fining your orator, his agents, servants and employees, from soliciting and accepting passengers for transporting for hire, in the three cars mentioned and referred to in this bill of complaint on any of the streets, lanes, and alleys of said city of Havre de Grace."

In their answer the defendants say:

"(1) That the defendant, the mayor and city Council of Havre de Grace, is a municipal corporation whose charter is codified as sections 276 to 402, inclusive, of chapter 680 of the Acts of 1916; that by the provisions of said charter the said city is empowered and charged with the duty of passing ordinances 'to protect and preserve the health of the citizens and the property rights and privileges of the city, and, for the preservation of peace and good order, securing persons and property from violence, danger or destruction; that ordinance numbered 298, referred to in the bill of complaint, was passed by said mayor and city council by virtue of and in pursuance of the authority contained in said charter.

"(2) That the said city of Havre de Grace has two principal thoroughfares running through said town, to wit, Union avenue and Washington street, the principal business section of said city being located on Washington street; that during the months of April and September of each year, while races are being conducted by the Harford Agriculture & Breeders' Association, at the race track near said city, there is a large transient population in said city; that,

during the months aforesaid, there also come to said city, from all parts of this and other states, a large number of irresponsible drivers of cars for hire; that before the passage of Ordinance No. 298 these cars would gather in the principal business section of Washington street in such numbers that said street would become practically closed to all other traffic, seriously interfering with the orderly progress of traffic in said street, and that, as the result of the keen competition among the drivers of said hiring cars, much disorder and rowdyism resulted, to the disturbance of the peace of the neighborhood and the annoyance of all the residents thereof; and that because of said condition said city was put to the expense of several additional officers in an effort to control the situation, but without result.

"(2½) That said ordinance was passed to correct the condition above set forth and for no other purpose."

They also deny that the ordinance is unconstitutional or void for any reason.

It was assumed at the hearing that the ordinance was adopted in the exercise of power conferred by the Legislature, Acts 1916, c. 680, "section" 308, and we will for the purpose of this opinion only, and without so deciding, also assume that the Legislature did delegate to the city of Havre de Grace the power to regulate the business of automobile hiring on the streets of Havre de Grace and that Ordinance No. 298 was adopted in the attempted exercise of that power, and will deal only with the reasonableness of that ordinance.

The first consideration suggested by an examination of the ordinance is that it is not a regulation at all, but a prohibition; the second is that it only excludes persons who reside beyond the corporate limits of Havre de Grace. Whether the municipality would under any circumstances have the right to absolutely

prohibit persons from accepting passengers for hire on its streets, as it has attempted in this ordinance to do, need not, in view of our conclusion upon the other question, be discussed. And the question is thus brought down to this: Did the ordinance unreasonably and unlawfully discriminate against the appellee and others in like situation by prohibiting them, and other persons not residing in Havre de Grace, from operating an automobile hiring business on certain streets of that town? In dealing with that question the learned judge who decided the case below said:

"The city of Havre de Grace is not a sovereign state, but is a part of Harford county, and its streets, lanes, and alleys are part of the public highways of the state of Maryland and open to all citizens of the state on equal terms for the purpose of travel; and, as the plaintiff is a citizen of Maryland, there is no necessity either to discuss or pass upon the rights of aliens or nonresidents in similar cases. When, however, these public highways are used for business purposes, such as that in which the plaintiff is engaged, different rules in some measure apply. The city, under its charter, has the right to pass proper ordinances to preserve order on the public highways, and to see that the legitimate use of the highways by the general public is not interfered with by persons seeking to use them for private purposes, and that, when used for business purposes, they are so used as not to disturb the public peace and comfort."

And with that reasoning we entirely agree.

It certainly cannot be seriously argued that an ordinance which forbids nonresidents of Havre de Grace from transacting on its streets the same business which they permit residents to transact there is a reasonable regulation designed in the interest of the public health or welfare, because we certainly cannot assume as a matter of law that the operation of an automobile hiring business by a nonresident of Havre de Grace would, because of his nonresidence, constitute

a greater peril to the health or welfare of that town than it would if operated by a resident; a more reasonable and probable view would be that it was intended to confer the monopoly of a profitable business upon residents of the town. But whatever its purpose may have been there can be no doubt but that the ordinance is discriminatory and unreasonable, and that the municipality had no power to adopt it.

* * *

It is undoubtedly true, as stated in *State* v. *Shapiro*, 131 Md. 171, 101 Atl. 795, Ann. Cas. 1918E, 196, that the state is not bound to observe a definite rule of uniformity in the enactment of license laws, so long as it —

"does not conflict with the constitutional right to the equal protection of the laws, or to due process of law, if the prescribed regulations operate equally and uniformly upon the class, and within the area affected, and their limitations are not clearly unreasonable."

But the converse is equally true that if a statute is unreasonable, or deprives persons affected by it of the equal protection of the law, it is void. And in this case we think the statute does have that effect.

The state licensed and authorized persons securing licenses under class E, § 141, art. 56, C. P. G. L. of Md., to engage in the business of hiring automobiles on any of the highways of the state, and expressly provided that the fee exacted for that license should be in lieu of all other taxes, fees, or charges except taxes upon the machines as personal property.

The ordinance, however, confines and restricts the right of exercising the privilege thus conferred on certain of the public streets and highways in Havre de Grace to residents of that city, and excludes all other members of the class, to wit, persons licensed under the provisions of section E from engaging in that business on such streets. Such a discrimination is in our opinion clearly unreasonable, and the ordinance is for that reason void.

For the reasons stated the order appealed from will be affirmed.

Order affirmed, with costs to the appellee.

Other authorities are numerous and are collected in 61 A.L.R. 337 and 112 A.L.R. 63. In view of the overwhelming weight of authority, the Chicago taxicab ordinance which prohibits the issuance of licenses to corporate applicants which do not have their principal place of business within the City of Chicago is void and the defendants who are drivers of a taxicab company which has its principal place of business outside the City of Chicago cannot be found guilty under the ordinance.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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On the Brief

APPENDIX A

Opinion of the United States Court of Appeals

Before Hastings, Chief Judge, and Schnackenberg and Swygert, Circuit Judges.

SCHNACKENBERG, *Circuit Judge.*

Evanston Cab Co., Skokie Red Top Cab Co., and Lincolnwood Red Top Cab Co., Illinois corporations, plaintiffs, brought an action against the City of Chicago, a municipal corporation, defendant, and the other defendants above-named, in the district court, under the Clayton Act, 15 U.S.C.A. §§ 15, 26, and the Sherman Act, 15 U.S.C.A. §§ 1, 2.

On motion of defendants, the action was dismissed at plaintiffs' costs. This appeal followed.[1]

The relevant facts as shown by the pleadings we set out in condensed form.

Chicago-O'Hare International Airport is an airport owned by the defendant City of Chicago and is the primary scheduled airline airport for the Chicago Metropolitan area consisting of the counties of Cook, Lake, DuPage, McHenry, Kane and Will, in the state of Illinois, and the counties of Lake and Porter in the state of Indiana. O'Hare is twenty-three miles from downtown Chicago and until March 28, 1956 was not within the incorporated area of the City of

[1] The last four defendants named are respectively the following officials of the City of Chicago: corporation counsel, public vehicle license commissioner, aide to the mayor, and a police officer assigned to duty in the office of the Public Vehicle License Commissioner.

Chicago. On that date it was annexed to the city. Physically it is completely separated from the rest of the corporate area of the city except for a connecting strip of Higgins Road and East River Road. All but a very small portion of passengers arriving at O'Hare in scheduled airline planes originate their flights outside the State of Illinois.

Plaintiffs are respectively engaged in the operation of taxicabs in the municipalities of Evanston, Skokie and Lincolnwood, in suburban Cook County.

The complaint alleges that 6,700,000 persons live in the Chicago metropolitan area and that all persons completing flights at O'Hare *engage* some form of *further* transportation to take them to their ultimate destination in the Chicago Metropolitan Area. To provide this further transportation the Chicago Helicopter airways has scheduled flights between O'Hare, Midway Airport, downtown Chicago, Gary, Indiana and Winnetka, Illinois.[2] All other public transportation in interstate commerce of persons completing flights at O'Hare to their final destinations in the Chicago Metropolitan Area is by taxicab.

The complaint charges that defendant taxicab concerns and other defendants conspired among themselves and with others to eliminate and restrict competition in the providing of taxicab service at O'Hare, by ratifying a prior prohibition of the plaintiffs from providing taxicab service to persons traveling in interstate commerce completing their flights at O'Hare, and by agreeing to prohibit all persons from providing such service in the regular taxi line except the cab company defendants and other taxicabs licensed by

[2] In addition Continental Air Transport Co., Inc., operates bus service between O'Hare, Midway Airport, downtown Chicago, Evanston, Illinois and Oak Park, Illinois.

the City of Chicago, and further agreed to permit the plaintiffs to render taxi service at O'Hare only when specifically contracted for by letter, telegram or telephone prior to rendering such service, thus placing the plaintiffs at a distinct competitive disadvantage.

The complaint further charges that the city council of defendant city enacted an ordinance effectuating said agreements and that it and certain other ordinances, copies of which are attached to the complaint, which limit plaintiffs in providing taxi service at O'Hare, are therefore unreasonable, discriminatory and deprive plaintiffs of their property without due process of law, contrary to the fourteenth amendment to the constitution of the United States.

The complaint further charges that the conspiracy and ordinance "actually restrain, burden and monopolize interstate commerce".

Plaintiffs seek recovery of damages for losses sustained by reason of the facts charged, relying on §§ 4 and 16 of the Clayton Act, 15 U.S.C.A. §§ 15, 26, and §§ 1 and 2 of the Sherman Act, 15 U.S.C.A. §§ 1, 2.

[1] 1. The United States Supreme Court has made clear that local operations of taxicabs, such as those involved in this case, do not constitute a part of interstate commerce within the meaning of the Sherman Act. United States v. Yellow Cab, 332 U.S. 218, 230, 67 S.Ct. 1560, 91 L.Ed. 2010 (1947), which we relied upon in Parmelee Transportation Company v. Keeshin, 292 F.2d 794 (7 Cir., 1961), cert. den. 368 U.S. 944, 82 S.Ct. 376, 7 L.Ed.2d 340.

In Yellow Cab, 332 U.S. at 230, 67 S.Ct. at 1566-1567, 91 L.Ed. 2010, the court said:

> "Finally, it is said that the appellees have conspired to control the principal taxicab operating companies in Chicago and to exclude others from engaging

in the transportation of interstate travelers to and from Chicago railroad stations. To that end, they have conspired to induce the City of Chicago to limit the number of licensed taxicabs to 3,000, to hold 2,593 (or 86%) of these licenses themselves, to obtain for Yellow and Checker any licenses above 3,000 which the city might later issue, and to prevent new operators from entering the cab business in Chicago by having Yellow and Checker annually renew licenses for cabs which they do not operate and have no intention of operating."

Then, answering the contention that the passengers in the taxicabs there involved were being transported in interstate commerce, the court added:

"The interstate commerce toward which this aspect of the conspiracy is directed is claimed to arise out of the following facts. Many persons are said to embark upon interstate journeys from their homes, offices and hotels in Chicago by using taxicabs to transport themselves and their luggage to railroad stations in Chicago. Conversely, in making journeys from other states to homes, offices, and hotels in Chicago, many persons are said to complete such trips by using taxicabs to transport themselves and their luggage from railroad stations in Chicago to said homes, offices and hotels. Such transportation of persons and their luggage is intermingled with the admittedly local operators of the Chicago taxicabs. But if is that allegedly interstate part of the business upon which rests the validity of the complaint in this particular.

"We hold, however, that such transportation is too unrelated to interstate commerce to constitute a part thereof within the meaning of the Sherman Act. These taxicabs, in transporting passengers and their luggage to and from Chicago railroad stations, admittedly cross no state lines; by ordinance, their service is confined to transportation 'between any two points within the corporate limits of the city.' None of them serves

only railroad passengers, all of them being required to serve 'every person' within the limits of Chicago. They have no contractual or other arrangement with the interstate railroads. Nor are their fares paid or collected as part of the railroad fares. In short, their relationship to interstate transit is only casual and incidental."

Further stating its reasons, the court, 332 U.S. at 231, 67 S.Ct. at 1567, 91 L.Ed. 2010, said:

> "Here we believe that the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination. What happens prior or subsequent to that rail journey, at least in the absence of some special arrangement, is not a constituent part of the interstate movement. The traveler has complete freedom to arrive at or leave the station by taxicab, trolley, bus, subway, elevated train, private automobile, his own two legs, or various other means of conveyance. Taxicab service is thus but one of many that may be used. It is contracted for independently of the railroad journey and may be utilized whenever the traveler so desires. From the standpoints of time and continuity, the taxicab trip may be quite distinct and separate from the interstate journey. To the taxicab driver, it is just another local fare."

Plaintiffs purport to see a departure from the ruling in Yellow Cab when they cite *United States v. Employing Plasters Association*, 347 U.S. 186, 74 S.Ct. 452, 98 L.Ed. 618 (1954) and *United States v. Employing Lathers Association*, 347 U.S. 198, 74 S.Ct. 455, 98 L.Ed. 627 (1954). We see none. In *Plasterers*, 347 U.S. at 189, 74 S.Ct. at 454, 98 L.Ed. 618, Mr. Justice Black pointed out that there

> "* * * a local group of people were to a large extent able to dictate who could and who could not buy plastering materials that had to reach Illinois through

> interstate trade if they reached there at all. Under such circumstances it goes too far to say that the Government could not possibly produce enough evidence to show that these local restraints caused unreasonable burdens on the free and uninterrupted flow of plastering materials *into* Illinois. That wholly local business restraints can produce the effects condemned by the Sherman Act is no longer open to question. * * *" (Italics supplied.)

In Lathers, the same justice quoted the course taken by lathing material produced in states other than Illinois and shipped interstate to Chicago, Illinois and finally delivered by a plastering contractor to his lathing contractor for use on local building jobs. The alleged conspiracy was among these contractors and the union whose members did the actual lathing. The court, 347 U.S. at 200, 74 S.Ct. at 456, 98 L.Ed. 627, said:

> "The complaint charges that an effect of the alleged combination and conspiracy has been that '[i]nterstate trade and commerce in lathing and related building materials has been unlawfully restrained.' Other allegations emphasize this charge by asserting that any restraint upon lathing work in Chicago necessarily and directly restrains and affects the interstate flow of lathing materials, and * * * building materials * * *.'
>
> "The complaint does state a cause of action * * *."

In the case at bar no commodity shipped in interstate commerce is involved and the *Plasterers* and *Lathers* cases are not applicable.

Plaintiffs would accomplish the "extinction" of Yellow Cab as authority by a process of reasoning which we shall attempt to condense.

They refer to a 1960 *per curiam* order of the Supreme Court of the United States, *Superior Ct. of State of Wash. for King County* v. *State of Wash. ex rel. Yellow Cab*

Service, 361 U.S. 373; 80 S.Ct. 400, 4 L.Ed. 2d 380, which reversed, on the authority of *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959), an order of the Supreme Court of Washington, in *State of Washington ex rel. Yellow Cab Service, Inc. v. International Brotherhood of Teamsters, etc., and Superior Court of the State of Washington for King County*, 53 Wash.2d 644, 333 P.2d 924 (1959).

By plaintiffs' brief herein, our attention is called to the fact that the Superior Court for King County, Washington, had been asked by Yellow Cab Service, Inc. to enjoin *picketing* of its premises by a *union*. The Superior Court refused injunctive relief because Yellow Cab Service was in interstate commerce and the case presented a labor dispute affecting interstate commerce over which the National Labor Relations Board would have jurisdiction. The Superior Court relied on *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 77 S.Ct. 598; 1 L.Ed.2d 601 (1957).

However, the Washington Supreme Court, on application for writ of mandate, considered Yellow Cab controlling and said that while Yellow Cab was decided under the Sherman Act, it was nonetheless an authority in the labor case before it.

It reasoned as follows, 333 P.2d at 928:

> "We do not believe that whatever unfair labor practice may be present in this case can possibly be said to be 'burdening or obstructing commerce' (see 49 Stat. 450, 29 U.S.C.A. § 152(7). * * *). There is no testimony in the record that this strike has impaired taxicab service to or from the railroad terminals, airports, and docks, and hence no evidence of any effect upon interstate commerce sufficient to justify the application of the National Labor Relations Act. *United States v. Yellow Cab Co., supra*. No such circumstance is present in this case."

It thereupon directed the Superior Court to take jurisdiction of relator's suit for injunctive relief. It was this action that the United States Supreme Court reversed by its 1960 *per curiam* order.

The *Garmon* case is one of a series of cases in which the Supreme Court of the United States was faced with the problems created by the failure of the National Labor Relations Board to take jurisdiction in labor disputes in industries which affect interstate commerce. The broad scope of the National Labor Relations Act which encompassed the State of Washington case is reflected by the definitions in § 2 of that act, 29 U.S.C.A. § 152. The term "commerce" is defined as meaning "trade, traffic, commerce, transportation, or communication among the several States", while the term "affecting commerce" means "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The term "labor dispute" is defined as including "any controversy concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

In Garmon, as well as in State of Washington, labor

In *Retail Clerks International Ass'n, Local* 1625, *A.F.L.-C.I.O.* v. *Schermerhorn*, 375 U.S. ____, 84 S.Ct. 219, the court said in respect to Garmon:

"* * * it merely rationalizes the problems of coexistence between federal and state regulatory schemes in the field of labor relations. * * *"

disputes were involved. In the case at bar, no labor dispute was involved and there is no contention that there was. No one is insisting that the National Labor Relations Board would have had any jurisdiction of the matter now before this court or that the Board's jurisdiction would have been invaded or affected by the action of this court or the district court. Moreover, no dispute exists in regard to any commodity moving in interstate commerce or which has or is about to enter into interstate commerce. No basis in fact or law appears to justify us in ignoring the persuasiveness of the reasoning and holding in Yellow Cab.

The passenger who enters a cab at O'Hare field or who leaves a cab at O'Hare field is furnished a service. Neither the owner of the cab nor the driver thereof crosses any state line. Nothing about the service affects interstate commerce. The service is incidental to a local operation and we would not be justified in resorting to impractical theorizing in order to conclude that a local ride in a local taxicab affects interstate commerce.

2. Plaintiffs contend that defendants entered into a conspiracy to restrain trade, and that the city, in pursuance thereof, passed the Chicago taxicab licensing ordinance, which is invalid, as a violation of the due process and equal protection clauses of the fourteenth amendment to the constitution of the United States as well as the privileges and immunities granted by article IV and the fourteenth amendment of said constitution, in that said ordinance makes an arbitrary and unreasonable discrimination against a corporation by requiring it, when applying for public passenger vehicle licenses, to have its principal place of business within the city of Chicago.

In *City of Chicago* v. *Vokes, et al.*, 28 Ill.2d 475, 193 N.E.2d 40 (1963), the Illinois Supreme Court reviewed convictions of certain taxicab drivers, charged with transporting passengers for hire without a proper license. Defendants there were employed by either Evanston Cab Company or Skokie Red Top Cab Company, also named as plaintiffs herein. They were charged with violating § 28-2 of the Chicago municipal code relating to public passenger vehicles, which makes it unlawful "for any person other than a metropolitan transit authority or public utility to operate a motor vehicle for the transportation of passengers for hire unless the vehicle is licensed by the city of Chicago as a public passenger vehicle." § 28-3 provides "Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. * * * No person shall be solicited or accepted in said vehicle for transportation from any place within the city. * * *"

§ 28-5.1, relating to licensing applications, provides that all "corporate applicants shall be organized or qualified to do business under the laws of Illinois and have their principal places of business in the city of Chicago".

The court pointed out, 28 Ill.2d at 477, 193 N.E.2d 40, that the ordinance provides that licenses must be applied for annually and that the commissioner of public vehicles should investigate the character and financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service, and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period.

The Illinois Supreme Court met the challenges to the constitutionality of the ordinance, including the ground now under consideration by us, by holding that the requirement that a corporate licensee have its principal place of business in the city is not so oppressive nor unreasonable as to render it vulnerable to the constitutional attack there made upon it, which has been repeated by plaintiffs in the case at bar.

The court said, 28 Ill.2d at 480, 193 N.E.2d at 44:

> "By its very nature the taxicab industry directly and substantially invokes consideration of public safety and welfare. Its vehicles are constantly on the city streets, day and night, and the members of the public who utilize them must place almost a blind trust in the fitness of their equipment and the competence of their drivers. Thus, not only does the operation of the business call for measures to protect others using the streets and highways, but also for regulations which insure the highest degree of safety for its passengers. * * *
>
> "If corporations licensed to operate taxis in the city of Chicago have no place of business there and do not maintain their records or equipment there, the functions of investigation, inspection and supervision required in the public interest would be exceedingly difficult if not impossible to completely and adequately perform. This is particularly true when we consider the vast number of suburban towns and villages encircling the city, and the circumstances that Chicago investigators and inspectors, once outside the territorial limits of the city, would be without authority to act or to require compliance with the ordinances involved. * * *
>
> "Further, it is also in the public interest to have the corporate officers and records available locally in the event of complaints, loss or litigation. * * *"

We agree with the aforesaid reasoning and holdings of the Illinois court in Vokes.

[2, 3] We find that the ordinance was enacted in the exercise of the city's wide scope of discretion in the adoption of police laws and is not without any reasonable basis and therefore arbitrary. One who assails a classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Morey v. Doud*, 354 U.S. 457, 463-464, 77 S.Ct. 1344, 1 L.Ed. 2d 1485 (1957). Plaintiffs have failed to sustain their burden.

We hold that the ordinance now under attack is not subject to the infirmities charged against it by plaintiffs and that, therefore, there is no basis set forth in the complaint for holding in favor of plaintiffs on the constitutional grounds urged.

3. In view of what we have held, it is unnecessary to discuss other points raised in plaintiffs' brief in this court.

For the reasons which we have stated, the order of the district court dismissing plaintiffs' cause is affirmed.

Order affirmed.

APPENDIX B

STATUTES INVOLVED

TITLE 15, UNITED STATES CODE:

§ 1: *Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty*

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum price for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title. *Provided further*, That the proceeding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be

illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282.

§ 2. *Monopolizing trade a misdemeanor; penalty*

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 2, 26 Stat. 209; July 7, 1955, c. 281, 69 Stat. 282.

§ 15. *Suits by persons injured; amount of recovery*

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. Oct. 15, 1914, c. 323, § 4, 38 Stat. 731.

§ 26. *Injunctive relief for private parties; exception*

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of

this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. Oct. 15, 1914, c. 323, § 16, 38 Stat. 737.

TITLE 29, UNITED STATES CODE:

§ 142. *Definitions*

When used in this chapter —

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

Ordinance Provisions Involved

Chapter 28, Municipal Code of Chicago:

28.1 Definitions.) As used in this chapter:

"Cabman" means a person engaged in business as proprietor of one or more taxicabs.

"Chauffeur" means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur.

"City" means the city of Chicago.

"Coachman" means a person engaged in business as proprietor of one or more livery vehicles, sightseeing vehicles or terminal vehicles.

"Commissioner" means the public vehicle license commissioner, or any other body or officer having supervision or public passenger vehicle operations in the city.

"Council" means the city council of the city of Chicago.

PUBLIC PASSENGER VEHICLES

"Livery vehicle" means a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.

"Person" means a natural person, firm, association or corporation in his own capacity and not in a representative capacity, the personal pronoun being applicable to all such persons of any number or gender.

"Public passenger vehicle" means a motor vehicle as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting in operation of a metropolitan transit authority or public utility under the Laws of Illinois.

"Sightseeing vehicle" means a public passenger vehicle for hire principally on sightseeing tours at a charge or fare per passenger for each tour fixed by agreement in advance or for hire otherwise at a charge for each vehicle per trip fixed by agreement in advance.

"Taxicab" means a public passenger vehicle for hire only at lawful rates of fare recorded and indicated by taximeter in operation when the vehicle is in use for transportation of any passenger.

"Taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers.

"Terminal vehicle" means a public passenger vehicle which is used exclusively by a coachman under contract with railroad or steamship carriers for the transfer of their passengers and hand baggage enroute in interstate travel between railroad terminals and steamship docks pursuant to through route published tariffs.

28-2. License required.) It is unlawful for any person other than a metropolitan transit authority or public utility to operate a motor vehicle, or for the registered owner thereof to permit it to be operated, for the transportation of passengers for hire, within the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle.

28-3. Interurban operations.) Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. While said vehicle is in the city no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire, and a white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed at the windshield of the vehicle. No person shall be solicited or accepted in said vehicle for transportation from any place within the city. Any person in control or possession of said vehicle who violates any of the provisions of this section shall be subject to arrest and fine of not less than fifty dollars nor more than two hundred dollars for each offense.

28-5. Application.) Application for public passenger vehicle licenses shall be made in writing, signed and sworn to by the applicant or, if applicant is a corporation, by its duly authorized agent, upon forms provided by the commissioner. The application shall contain the full name, Chicago business address and

residence address of the applicant, the business telephone number of the applicant, the manufacturer's name, model, length of time in use, horsepower and seating capacity of the vehicle which applicant will use, if a license is issued, and the class of public passenger vehicle license requested. If the applicant is affiliated or to become affiliated or identified with any person by the color scheme of vehicles, trade name or emblem, telephone number, radio dispatch system, or service agreement, the application shall contain the full name, Chicago business address and telephone number of said affiliate, and a copy of the agreement with said affiliate, if any, shall be filed with the application.

28-5.1. Qualifications.) All corporate applicants for public passenger vehicle licenses shall be organized or qualified to do business under the laws of Illinois and have their principal places of business in the city of Chicago, and all other applicants shall be citizens of the United States residing and domiciled in the City of Chicago. No person shall be qualified for license, if affiliated of identified with any person, by agreement or otherwise, as described in section 28-5, unless said affiliate is a corporation organized or qualified to do business under the laws of Illinois and has its principal place of business in Chicago or is a citizen of the United States residing and domiciled in the city of Chicago, registered with the commissioner, and has complied with all the provisions of this ordinance and all orders, rules and regulations adopted or issued by the commissioner governing the business of such affiliates.

28-6. Investigation and issuance of license.) Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service and to maintain or replace the equip-

ment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed, and that the applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued.

28-32. Penalty.) Any person violating any provisions of this chapter for which a penalty is not otherwise provided shall be fined not less than $5.00 nor more than $100.00 for the first offense, not less than $25.00 nor more than $100.00 for the second offense during the same calendar year, and not less than $50.00 nor more than $100.00 for the third and succeeding offenses during the same calendar year, and each day that such violation shall continue shall be deemed a separate and distinct offense.

APPENDIX C

Judgment Order Sought to be Reviewed

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

Office-Supreme Court, U.S.
FILED
APR 13 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 918

EVANSTON CAB CO., a corporation; SKOKIE RED TOP CAB CO., a corporation; LINCOLNWOOD RED TOP CAB CO., a corporation;

Petitioners,

vs.

CITY OF CHICAGO, a municipal corporation; YELLOW CAB CO., a corporation; CHECKER TAXI CO., INC., a corporation; FLASH CAB CO., a corporation; PUBLIC TAXI SERVICE, INC., a corporation; ABERNATHY TAXI ASSOCIATION, INC., a corporation; SOUTH SIDE CAB CO., a corporation; HIGHLAND CAB COMPANY, INC., a corporation; COMMERCIAL CAB CO., a corporation; BERTEL W. DAIGRE; AMERICAN UNITED CAB ASSOCIATION, an unincorporated association; JACK TAYLOR, individually and as President of the Defendant American United Cab Association; PETE BARBERO, individually and as Secretary of the Defendant American United Cab Association; JOHN C. MELANIPHY; JAMES Y. CARTER; RAY SIMON; and THOMAS J. COONEY,

Respondents.

BRIEF IN OPPOSITION FOR RESPONDENTS, CITY OF CHICAGO, A MUNICIPAL CORPORATION, JOHN C. MELANIPHY, JAMES Y. CARTER, RAY SIMON AND THOMAS J. COONEY.

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BRIEF IN OPPOSITION FOR RESPONDENTS, CITY OF CHICAGO, A MUNICIPAL CORPORATION, JOHN C. MELANIPHY, JAMES Y. CARTER, RAY SIMON AND THOMAS J. COONEY.

Opinions Below.

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 325 F. 2d 907.

Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented.

In the court below, and in this Court, we have taken issue with petitioners' summarization of the questions presented. Insofar as these respondents are concerned, these are the questions presented:

1. Where the legislative body enacts a law which allegedly contravenes constitutional provisions, must the municipality (or the State or the Federal Government) respond in damages to persons affected by such a law or are such persons limited in their remedy to a suit asking that the law be declared invalid?
2. Does taxicab service provided locally for those arriving at or departing from an airport have a direct and substantial effect on interstate commerce so that federal antitrust jurisdiction may be invoked?
3. Is an ordinance lawfully adopted by a municipal legislative body providing for the licensing of taxicabs subject to antitrust action by taxicab companies operating in another municipality?
4. Does discussion of contemplated legislation violate antitrust laws?
5. Is the Chicago taxicab licensing ordinance constitutional?
6. Are municipal corporations or municipal officials liable under antitrust laws?

Petitioners inject statements of fact into their presentation of the questions presented which are not supported by the record. For example in the petition they assert (p. 2) there is a stoppage or other restraint of taxicab service which causes a substantial interruption to or inter-

ference with the free flow of commerce. This gratuitous conclusion is a figment of petitioners' imagination. In their complaint and in their petition filed in this Court petitioners have indulged in numerous conclusions unsubstantiated by any allegations of fact. They complain of "stoppages, interruptions and interference" but there is nothing to justify such charges. In truth it appears on the face of complaint that the ordinance establishing the number of taxicabs for Chicago was enacted subsequent to extensive public hearings as to public convenience and necessity (R. 11, 18-26). The inconsistency of petitioners' position is best demonstrated by their allegation in their complaint to the effect that the public hearings as to the need for increased taxicab service "considered the City of Chicago taxicab situation alone and not that of the Chicago Metropolitan Area, and took place at a time in which the scheduled airlines used Chicago Midway Airport primarily" (R. 11). Petitioners themselves disprove this allegation in their complaint by attaching to their complaint the report arising out of the public hearings which found (R. 22):

> "Chicago *and its metropolitan area* * * * has the second largest concentration of people in the United States. The area continues to show a rapid growth in population." (Emphasis supplied.)

The report continues by showing that (R. 23): "The Northwest Expressway, scheduled for completion in the summer of 1960, will provide O'Hare Airport passengers with a high-speed, limited access highway into the heart of the City" and estimates (R. 23, 24):

> "The number of enplaned passengers at O'Hare Airport increased from 336,000 [in] 1956 to 603,000 in 1958 and it is estimated that the number of enplaned passengers will approximate 750,000 in 1959 and [6,820,000] in the year of 1965."

Ordinance Involved.

In addition to the statutes given in the petition, the ordinance adopted by the City of Chicago on March 9, 1962 is essential to the issues in this cause. The ordinance is attached hereto as an Appendix.

Statement.

Rule 40(3) provides that respondents' brief need not contain a statement of the case. However in the case at bar we consider it necessary to provide our own statement because petitioners have failed to state the facts in their proper perspective. Rather, petitioners have implied a set of facts contrary to what actually occurred.

The gist of the complaint in the court below was the allegation that on January 23, 1962 the respondents City of Chicago and its officials attended a so-called "secret meeting" with representatives of taxicab companies licensed by the City where they "combined, confederated, conspired and agreed" to eliminate and restrict competition in providing taxicab service at the Chicago-O'Hare International Airport (R. 11, 12). Proof of the conspiracy was charged to be found in the ordinance enacted March 9, 1962 (R. 12), which was attached to the complaint as Exhibit B and which was set out *in haec verba* in the Appendix filed in the court below (R. 26-31). Petitioners refer to the so-called "secret meeting" as though some fell purpose was arranged at a clandestine meeting. Yet, this ordinance, the gravamen of petitioners' complaint, is not referred to in the petition for certiorari as being one of the statutes involved, nor is it set forth as an appendix to the petition.

In truth, the "secret meeting" to which petitioners refer was a meeting of responsible city officials with representa-

tives of all taxicab companies licensed by the city. The city's corporation counsel, its public vehicle license commissioner, an aide to the mayor and a member of the police department conferred with representatives of Yellow Cab Company, Checker Taxi Co., Inc., Public Taxi Service, Inc., Abernathy Taxi Association, South Side Cab Company, Highland Cab Company, Inc., Commercial Cab Company, Bertel W. Daigre, American United Cab Association, Jack Taylor and Pete Barbero. What was the reason for the conference? The purpose of the meeting and what transpired there is best determined by the ordinance of March 9, 1962 which grew out of the meeting.

As alleged in petitioners' complaint, the City of Chicago took over the Airport in 1956 (R. 8) and since said date it has been developed into the world's busiest airport due in no small measure to millions of dollars invested in construction and improvement. However, the taxicab companies which were licensed by the city did not service the airport as circumstances required. Further, rates established by the city for taxicab service were only applicable to trips within the city and had no binding effect for trips to areas outside the city. These conditions necessitated immediate correction and such was the purpose of what petitioners term the "secret meeting."

The ordinance which petitioners attacked in the court below—but which they scarcely mention here—is attached to our brief as an appendix. It was adopted March 9, 1962 (Journal of the Proceedings of the City Council of Chicago, March 9, 1962, pp. 6882-6885) and accomplished twin objectives. One, it made it unlawful for the driver of any taxicab to refuse any person transportation from O'Hare Airport. Two, it provided that taxicab drivers must service the airport by transporting persons to suburban areas at prescribed maximum rates. This was the result of the "secret meeting." This is the ordinance of which peti-

tioners complain. This is the basis of petitioners' contention that the City of Chicago and its officials have violated Federal Anti-Trust Statutes for which they should respond in damages to petitioners. On the contrary, the City contends that the end result of the March 9, 1962, ordinance was an improvement in taxicab service for persons arriving at O'Hare Airport and stringent measures to prevent excessive fares.

The Chicago ordinances regulating the operation of taxicabs have always prohibited the transportation of passengers for hire by unlicensed taxicabs, although suburban taxicabs could always enter the city for the purpose of discharging passengers accepted for transportation outside the city. When suburban taxicabs have discharged a passenger accepted for transportation outside the city, they are not permitted to accept or solicit passengers. This requirement has been in effect for many years. Presumably, the municipalities in which petitioners are licensed to operate have similar ordinances. Most assuredly, if Chicago's taxicabs were authorized to operate within petitioners' municipalities in competition with petitioners' taxicabs chaos would result. For some reason, petitioners have directed their attack upon taxicab operations at O'Hare Airport although their arguments, if sound, would have equal application to railroad depots in Chicago's central areas or to taxicab operations anywhere within the city.

ARGUMENT.

Insofar as these respondents are concerned there is no justification whatsoever for this suit. The city and its officials, acting in the public interest, conferred with licensed taxicab companies and then enacted an ordinance (1) requiring the companies to service O'Hare Airport and (2) establishing maximum fares that the companies could assess for suburban trips. That is the only thing these respondents have done. Because of this the petitioners are asking this Court to compel these respondents to pay enormous sums of money for a supposed violation of Federal Antitrust Statutes.

I.

The business of the respondent taxicab companies is not in interstate commerce.

Although we have already demonstrated that these respondents have not violated any provisions of the antitrust statutes and are not liable to petitioners, there are other reasons why petitioners' suit was properly dismissed.

Taxicab service provided locally for those arriving at or departing from an airport does not have a direct and substantial effect on interstate commerce so that federal antitrust jurisdiction may be invoked. In fact, petitioners concede that local taxicab business has been held by this Court not to be sufficiently related to interstate commerce so as to come within the provisions of the several antitrust acts. *United States* v. *Yellow Cab Co.*, 332 U. S. 218 (1947). See also *United States* v. *Yellow Cab Co.*, 338 U. S. 338 (1949). The latter decision is directly in point and controlling as the Court below held.

Petitioners rely upon cases not related to the facts in the case at bar as authority for their position. However, the court below effectively answered such contention and discussed and distinguished the cases upon which petitioners rely. The courts have consistently required that in order for federal antitrust jurisdiction to be sustained the effect on interstate commerce must be direct and substantial and not merely inconsequential, remote or fortuitous. *Cf. Page v. Work*, 290 F. 2d 323, 332 (9th Cir., 1961); *Atlantic Co., v. Citizens Ice & Cold Storage Co.*, 178 F. 2d 453, 457, 458 (5th Cir., 1949), *cert. den.* 339 U. S. 953. See, also, *Hotel Phillips, Inc. v. Journeyman Barbers, etc.*, 301 F. 2d 443 (8th Cir., 1962); *Lawson v. Woodmere*, 217 F. 2d 148 (4th Cir. 1954); *Spears Free Clinic and Hospital v. Cleere*, 197 F. 2d 125, 127 (10th Cir., 1952).

Assuming, *arguendo*, that any monopolistic tendencies resulted from the enactment of the ordinances the courts have generally upheld the validity of ordinances as against an objection based upon the alleged monopolistic tendency or effect of the ordinance (see Anno. 159 A.L.R. 821-827 following *North Little Rock Transp. Co. v. North Little Rock*, 207 Ark. 976, 184 S. W. 2d 52, 159 A.L.R. 813 (1944).

In *Capitol Taxicab Co. v. Cermak*, 60 F. 2d 608 (D. C. Ill. 1932), the court said of a similar ordinance (p. 612):

> "To the argument that the ordinance tends to create a monopoly, it is sufficient answer that the city has not by its legislation surrendered its right to grant other and further certificates to all other applicants. It may still grant applications, and undoubtedly adequate remedy exists against affirmative exercise of arbitrary authority in that respect."

Because the taxicab ordinance does not infringe on interstate commerce, the acts of the city and its officials do not fall within the provisions of the several antitrust acts.

II.

An ordinance lawfully adopted by a municipality regulating and licensing taxicabs which operate within the city cannot serve as the basis of an antitrust action against the municipality and its officials.

The City of Chicago is empowered by law to license, tax, regulate and prohibit taxicabs (Ill. Rev. Stat. 1963, chap. 24, pars. 11-42-4, 11-42-6), to regulate the use of streets and traffic thereon (Ill. Rev. Stat. 1963, chap. 24, pars. 11-80-2, 11-80-20) and to adopt such ordinances as may be necessary to carry into effect such powers (Ill. Rev. Stat. 1963, chap. 24, par. 1-2-1). Regulatory ordinances enacted pursuant to such statutory powers have been sustained by the courts: *Weksler v. Collins*, 317 Ill. 132, 147 N. E. 797, *error disc.* 273 U. S. 779 (1925); *The People ex rel Johns v. Thompson*, 341 Ill. 166, 173 N. E. 137 (1930); *City of Decatur v. Chasteen*, 19 Ill. 2d 204, 166 N. E. 2d 29 (1960).

The City of Chicago has consistently exercised its powers under the foregoing statutory provisions and has adopted ordinances regulating the operation of taxicabs within the city. Ordinances so adopted have always contained provisions prohibiting the operation of unlicensed taxicabs within the city and providing that suburban taxicabs may bring passengers into the city. (*Cf.* Journal of the Proceedings of the City Council of Chicago, December 20, 1951, pp. 1595-1600). The most recent regulatory ordinance was adopted August 24, 1959 (effective January 1, 1960) after extensive public hearings as to the necessity for additional taxical service. (*See Yellow Cab Co. v. City of Chicago*, 23 Ill. 2d 453, 178 N. E. 2d 330 (1961)). The latter ordinance contained the usual provisions as to interurban operations. This ordinance, similar to all prior ordinances,

prohibited the operation of public passenger vehicles within the city unless licensed by the city, but permitted suburban vehicles to enter the city for the purpose of discharging passengers. Thereafter, such unlicensed vehicles were required to leave the city without soliciting or accepting passengers. This standard provision has been in effect for many years prior to the adoption of the 1959 ordinance.

The courts have rejected contentions that the ordinances create a monopoly. *Yellow Cab Co. v. City of Chicago*, 396 Ill. 388, 399, 71 N. E. 2d 652 (1947); *People ex rel. Hafer v. Flynn*, 13 Ill. 2d 368, 379, 150 N. E. 2d 183 (1958). In *Olsen v. The City of Chicago*, 25 Ill. 2d 292, 184 N. E. 2d 879 (1962), the Illinois Supreme Court considered an attack by suburban taxicab drivers on the city's authority to regulate the operation of taxicabs at O'Hare Airport and upheld the identical ordinances here being considered saying (25 Ill. 2d at 295):

> "They do not seek authority to pick up only passengers going to the municipalities in which they are respectively licensed to operate. Indeed, they do not suggest that the three very small municipalities that are named as having issued taxicab licenses to them are responsible for an appreciable, or even a measurable fraction of the total taxicab business originating at the airport. What the plaintiffs seek is authority to solicit and pick up passengers going from the airport to any suburban municipality. In other words, they insist upon the right to pick up passengers in one municipality in which they have no license to operate, and to carry those passengers to other municipalities in which they have no license to operate."

This is precisely what petitioners seek in the case at bar.

Furthermore, the various antitrust statutes are inapplicable to the facts in the case at bar, for we are here

concerned with legislative action. In *Parker v. Brown*, 317 U. S. 341 (1943) the Court said (pp. 350, 351):

> "But it is plain that the [] program here was never intended to operate by force of individual agreement or combination. It derived its authority and its efficacy from the legislative command of the state and was not intended to operate or become effective without that command. We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress."

So, in the case at bar, these respondents, the City and its officials should not be held to respond in damages for engaging in activities directed by its legislature. This was their duty.

III.

Discussion of proposed legislation does not constitute a conspiracy to violate antitrust laws.

Petitioners charged that the respondents conspired together to eliminate and restrict competition in taxicab service at O'Hare Airport as a result of which the ordinance complained of was enacted (R. 11, 12). The ordinance of March 9, 1962, shows on its face that it was enacted in the best interests of the passengers coming to or departing from the Chicago area via the O'Hare Airport facilities. The ordinance makes it mandatory that taxicabs licensed by the City provide adequate service at the airport. The ordinance makes it mandatory that only a prescribed fare be charged for trips to the various sur-

rounding communities, a departure from past practices of overcharging.

If, in fact, there was an illegal agreement as plaintiffs contend, then, under Illinois law, defendants could be prosecuted and punished (Ill. Rev. Stat. 1965, chap. 121½, pars. 301 *et seq.*). But the supposed activities complained of by petitioners do not constitute an illegal agreement. It appears that a conference was held by city officials and representatives of the various licensed taxicab owners to establish rates of fare for suburban trips. The establishment of rates of fare for suburban trips makes it clear that the licensed taxicabs were required to provide adequate service. The ordinance also established the right of petitioners and others similarly situated to accept passengers at O'Hare Airport if such was the desire of the passengers.

The law is well established that it is not illegal for people to seek action on laws in the hope that they may bring about an advantage to themselves and a disadvantage to their competitors. *Eastern R. R. Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U. S. 127 (1961). Further, joint efforts to influence legislative and administrative action for the purpose of destroying or restricting competition does not violate the law. *Association of Western Rys.* v. * Riss & Co.*, 299 F. 2d 133 (D. C. Cir., 1962), *cert. den.* 370 U. S. 916. Thus, the taxicab respondents are not subject to antitrust action because of any attempt they made, if any, to influence legislation. Further, an analysis of the March 9, 1962 ordinance leads to the conclusion that the taxicab respondents did not receive any advantages therefrom that they did not previously possess. Indeed, they are worse off under the present ordinance than they were under the previous taxicab ordinance.

As to the City and its officials, there was certainly no

agreement to seek action on laws in the hope that it would constitute an advantage to themselves and a disadvantage to their competitors. The City has no competitors as it is not engaged in the taxicab business. The City and its officials made no attempt to bring about an advantage for one group over another. These respondents, in proposing, discussing, and enacting legislation are only motivated by the best interests of the people of the City.

IV.

The provisions of the Chicago ordinance requiring corporations to have a place of business within the municipality are valid and a reasonable exercise of the police power.

Petitioners challenge the validity of those provisions of the Chicago ordinances which require a corporate applicant for a taxicab license to have its principal place of business in the city. This precise issue is not clearly presented in the record. In their complaint petitioners employ a shotgun attack by charging (R. 12, 13):

> "Said ordinance [the ordinance of March 9, 1962 which required taxicabs to service O'Hare Airport and which established maximum fares for travel to suburban areas] and the other Chicago Taxicab ordinances * * * which limit the [petitioners] in providing taxi service at O'Hare, are under the circumstances set forth above wholly unreasonable, discriminatory and deprive the [petitioners] of their property without due process of law contrary to the XIVth Amendment to the Constitution of the United States."

The "circumstances set forth above" in petitioners' complaint relate to the supposed violations of antitrust statutes. Nowhere in the complaint do petitioners assert that the Chicago ordinances are unconstitutional because they

violate the due process and equal protection clauses of the XIVth Amendment in requiring corporate applicants to have their principal place of business in the city. All we have is a vague, general charge that would be applicable to almost any situation.

The "other Chicago Taxicab ordinances" referred to in the complaint are (1) the ordinance effective January 1, 1960 increasing the number of taxicabs to 4600 (R. 32, 33); (2) the ordinance establishing the office of public vehicle license commissioner and prescribing his powers and duties (R. [illegible]); the ordinance regulating taxicabs (R. 35-57); the ordinance regulating chauffeurs (R. 57-63); and the ordinance providing for the registration of school vehicles (R. 63-67). In their petition in this Court petitioners provide a paragraph giving the statutes involved (Petition, p. 3); omit completely the ordinance of March 9, 1962 and rely only upon a few of the sections of the ordinance regulating taxicabs (Petition App. 15-19). All of the other ordinances and the bulk of the taxicab ordinance relied upon in the complaint are absent.

In the prayer to their complaint, petitioners seek monetary damages and injunctive relief, but they do not ask the Court to strike down the ordinances involved as being unconstitutional (R. 14-16).

Even though petitioners have failed to present a specific attack, their position asserted here is unsound. The court below effectively answered such arguments relying upon *City of Chicago* v. *Yokes*, 28 Ill. 2d 475, 193 N. E. 2d 4 (1963). To the same effect is *Larson* v. *City of Rockford*, 371 Ill. 441, 21 N. E. 2d 396 (1939) which petitioners cite as though it sustains their position (Petition, pp. 20, 21), although petitioners conclude by stating that the *Larson* case upon which they presumably rely is "far different" than the ordinance before the Court in the case at bar (Petition, p. 21).

V.

Municipalities and municipal officials are not liable under antitrust laws.

Petitioners have brought this suit against the City of Chicago and, in addition, against the Corporation Counsel of the City, the Public Vehicle License Commissioner, an administrative assistant to the Mayor and a police officer. It is established that municipal officials, in the discharge of their official duties, are not required to respond in damages for any consequences of their actions or decisions. *Wise v. City of Chicago*, 308 F. 2d 364 (7th Cir., 1962), *cert. den.* 372 U. S. 944; *Kostal v. Stoner*, 292 F. 2d 492, 493 (10th Cir., 1961); *Stitt v. Lynch*, 267 F. 2d 237, 239 (7th Cir., 1959); *Laughlin v. Rosenman*, 161 F. 2d 838, 841, 842 (D. C. Cir., 1947); *Peckham v. Scanlon*, 241 F. 2d 761, 763 (7th Cir., 1957); *Rhodes v. Houston*, 202 F. Supp. 624, 633, 634 (D. C. Neb. 1962); *Thompson v. Evans*, 49 Ill. App. 289 (1892); *Martelli v. Pollock*, 162 Cal. App. 2d 655, 328 P. 2d 795, 798 (1958).

There is nothing in the record of this case which indicates any basis for a suit for damages against such municipal officials. The court below properly held that the suit should have been dismissed as to the municipality and the municipal officials. As to the City of Chicago, it is submitted that it was not the intention of Congress to bring municipal corporations within the ambit of antitrust statutes. *Monroe v. Pape*, 365 U. S. 167, 187-192 (1961).

Conclusion.

We have demonstrated that the decision of the court below is clearly correct, that there is no conflict of decision which should persuade this Court to grant certiorari and that there is no important question of Federal law for the Court to consider.

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

JOHN C. MELANEPHY,
Corporation Counsel of the City of Chicago,
Counsel for Certain Respondents.

SYDNEY R. DREBIN,
ROBERT J. COLLINS,
Assistant Corporation Counsel,
Of Counsel.

APPENDIX

Ordinance adopted March 9, 1962 by the City Council of the City of Chicago (Journal of the Proceedings of the City Council of the City of Chicago, March 9, 1962, pp. 6882-6885).

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Section 28.9.1 of the Municipal Code of Chicago as amended is amended by striking out the words "a natural person" appearing in the third sentence thereof and substituting therefor the following words: "a person or corporation".

SECTION 2. Section 28.28 of the Municipal Code of Chicago as amended is amended by adding the following paragraphs:

Every driver of a taxicab licensed by the City of Chicago as a public passenger vehicle, who upon the premises of the Chicago O'Hare International Airport and not otherwise engaged in the transportation of a person or persons, shall service said airport by transporting, when requested, any person from said airport to any listed suburb of the City of Chicago and the driver shall not charge more than the established rate of transportation to such listed suburb as is established herein by a schedule rate of maximum fare to and as posted at the terminal buildings of said airport. It shall be unlawful for a driver of a taxicab to refuse any person transportation from said airport. It shall be unlawful for any driver of any taxicab not licensed as such by the City of Chicago to solicit or engage in the transportation of any person upon the Chicago O'Hare International Airport for transportation within or without the City of Chicago; provided, however, that this provision shall not apply where the person

at said airport desiring other taxicab service has personally or through his agent previously by letter, telegram, or telephone specifically engaged a suburban taxicab to transport him to any of the suburbs of the City of Chicago.

Nothing herein shall be construed to prohibit any public passenger vehicle from entering Chicago-O'Hare International Airport to discharge passengers previously accepted outside the city for that purpose.

SECTION 3. The following schedule of taxicab rates of maximum fare shall be effective from the Chicago-O'Hare International Airport to the address directed by the passenger to the respective suburb listed herein:

Miles	*Town*	*Rate*
11	Addison	$ 4.40
66	Alden	26.40
31	Alsip	12.40
29	Algonquin	11.60
45	Antioch	18.00
21	Argo	8.40
25	Argonne Lab.	10.00
13	Arlington Track	5.20
12	Arlington Heights	4.80
38	Aurora	15.20
18	Bannockburn	7.20
23	Barrington	9.20
23	Barrington Hills	9.20
21	Bartlett	8.40
32	Batavia	12.80
22	Bedford Park	8.80
9	Bellwood	3.60
7	Bensenville	2.80
10	Berkeley	4.00
16	Berwyn	6.40
16	Bloomingdale	6.40
34	Blue Island	13.60
21	Bridgeview	8.40
12	Broadview	4.80
15	Brookfield	6.00

Miles	*Town*	*Rate*
16	Buffalo Grove	6.40
49	Burnham	19.60
47	Calumet City	18.80
35	Calumet Park	14.00
21	Carol Stream	8.40
29	Carpentersville	11.60
29	Cary	11.60
48	Channel Lake	19.20
45	Chicago Heights	18.00
28	Chicago Ridge	11.20
19	Cicero	7.60
18	Clarendon Hills	7.20
19	Cloverdale	7.60
38	Country Club Hills	15.20
37	Crestwood	14.80
50	Crete	20.00
35	Crystal Lake	14.00
26	Cuba	10.40
17	Deerfield	6.80
21	Deer Park	8.40
5	Des Plaines	2.00
26	Diamond Lake	10.40
36	Dixmoor	14.40
39	Dolton	15.60
22	Downers Grove	8.80
28	Dundee	11.20
48	E. Chicago Heights	19.20
27	Elgin	10.80
8	Elk Grove Village	3.20
12	Elmhurst	4.80
9	Elmwood Park	3.60
15	Evanston	6.00
31	Evergreen Park	12.40
42	Flossmoor	16.80
14	Forest Park	5.60
18	Forest View	7.20
23	Fort Sheridan	9.20
44	Fox Lake	17.60
28	Fox River Grove	11.20
29	Fox River Heights	11.60

Miles	*Town*	*Rate*
48	Frankfort	19.20
6	Franklin Park	2.40
32	Geneva	12.80
32	Gilberts	12.80
23	Glencoe	9.20
17	Glendale	6.80
45	Glenwood	18.00
20	Glen Ellyn	8.00
12	Glenview	4.80
12	Golf	4.80
36	Gray's Lake	14.40
29	Great Lakes	11.60
31	Gurnee	12.40
37	Hainesville	14.80
21	Half Day	8.40
19	Hanover Park	7.60
20	Harvester	8.00
41	Harvey	16.40
6	Harwood Heights	2.40
25	Hawthorne Woods	10.00
41	Hazelcrest	16.40
26	Hickory Hills	10.40
19	Highland Park	7.60
23	Highwood	9.20
10	Hillside	4.00
14	Hines Hospital	5.60
17	Hinsdale	6.80
17	Hodgkins	6.80
14	Hoffman Estates	5.60
30	Hometown	12.00
40	Homewood	16.00
21	Hubbard Woods	8.40
23	Indian Creek	9.20
20	Indian Head Park	8.00
32	Island Lake	12.80
10	Itasca	4.00
40	Joliet	16.00
19	Justice	7.60
70	Kankakee	28.00
20	Kenilworth	8.00

Miles	*Town*	*Rate*
21	Kildeer	8.40
14	LaGrange	5.60
13	LaGrange Park	5.20
28	Lake Barrington	11.20
27	Lake Bluff	10.80
24	Lake Forest	9.60
31	Lake in the Hills	12.40
37	Lakemoor	14.80
40	Lake Villa	16.00
36	Lakewood	14.40
24	Lake Zurich	9.60
45	Lansing	18.00
28	Lemont	11.20
27	Libertyville	10.80
40	Lily-Cache	16.00
20	Lincolnshire	8.00
11	Lincolnwood	4.40
24	Lisle	9.60
36	Lindenhurst	14.40
37	Lockport	14.80
15	Lombard	6.00
41	Long Lake	16.40
20	Long Grove	8.00
42	Loon Lake	16.80
49	Lynwood	19.60
16	McCook	6.40
42	McCullum Lake	16.80
40	McHenry	16.00
63	Manteno	25.20
37	Markham	14.80
45	Matteson	18.00
11	Maywood	4.40
12	Medinah	4.80
8	Melrose Park	3.20
34	Merrionette Park	13.60
22	Mettawa	8.80
35	Midlothian	14.00
26	Middlebury	10.40
50	Minooka	20.00
42	Mokena	16.80

Miles	*Town*	*Rate*
48	Monee	19.20
39	Montgomery	15.60
37	Mooseheart	14.80
13	Morton Grove	5.20
9	Mt. Prospect	3.60
28	Mundelein	11.20
27	Naperville	10.80
54	New Lenox	21.60
8	Niles	3.20
6	Norridge	2.40
36	North Aurora	14.40
17	Northbrook	6.80
30	North Chicago	12.00
15	Northfield	6.00
8	Northlake	3.20
15	N. Riverside	6.00
35	Oak Forest	14.00
26	Oak Grove	10.40
14	Oakbrook	5.60
15	Oakbrook Terrace	6.00
35	Oak Forest	14.00
29	Oak Lawn	11.60
36	Old Mill Creek	14.40
13	Oak Park	5.20
44	Olympia Fields	17.60
34	Orland Park	13.60
42	Oswego	16.80
16	Palatine	6.40
29	Palos Heights	11.60
28	Palos Hills	11.20
30	Palos Park	12.00
29	Park City	11.60
6	Park Ridge	2.40
45	Park Forest	18.00
54	Peotone	21.60
43	Phoenix	17.20
38	Plainfield	15.20
36	Posen	14.40
57	Richmond	22.80
46	Richton Park	18.40
37	Riverdale	14.80

Miles	Town	Rate
17	Riverwoods	6.80
11	River Forest	4.40
8	River Grove	3.20
16	Riverside	6.40
34	Robbins	13.60
42	Rockdale	16.80
13	Rolling Meadows	5.20
32	Romeoville	12.80
14	Roselle	5.60
3	Rosemont	1.20
39	Round Lake	15.60
38	Round Lake Beach	15.20
41	Round Lake Park	16.40
25	Roundout	10.00
50	Sauk Village	20.00
15	Schaumburg	6.00
45	Shorewood	18.00
30	Sleepy Hollow	12.00
48	Spring Grove	19.20
30	St. Charles	12.00
20	Streamwood	8.00
4	Schiller Park	1.60
13	Skokie	5.20
59	Sollit	23.60
47	S. Chicago Heights	18.80
32	S. Elgin	12.80
44	S. Holland	17.60
24	Spaulding	9.60
48	Steger	19.20
18	Stickney	7.20
7	Stone Park	2.80
18	Summit (Cook Cty)	7.20
47	Sunnyside	18.80
16	Techny	6.40
43	Thornton	17.20
35	Tinley Park	14.00
29	Valley View	11.60
37	Venetian Village	14.80
23	Vernon Hills	9.20
14	Villa Park	5.60
35	Volo	14.00

Miles	*Town*	*Rate*
36	Wadsworth	14.40
27	Warrenville	10.80
36	Washington Park	14.40
30	Wauconda	12.00
34	Waukegan	13.60
26	Wayne	10.40
10	Westchester	4.00
28	West Chicago	11.20
15	Western Springs	6.00
21	W. Lake Forest	8.40
20	Westmont	8.00
22	Wheaton	8.80
14	Wheeling	5.60
20	Willow Brook	8.00
20	Willow Springs	8.00
19	Wilmette	7.60
29	Wilson	11.60
25	Winfield	10.00
20	Winnetka	8.00
46	Winthrop Harbor	18.40
43	Wonder Lake	18.00
8	Wood Dale	3.20
28	Woodridge	11.20
28	Worth	11.20
44	Woodstock	17.60
45	Zion	18.00

For each extra passenger a charge of $0.20 shall be charged.

When toll roads are used the toll charges to and from the destination shall be added to the fare.

Transportation of any person to any suburb or unincorporated area, not included in said schedule of rates, shall be at a maximum rate of $0.40 per mile.

Every passenger under twelve years of age when accompanied by an adult shall be carried without charge.

SECTION 4. This ordinance shall take effect upon passage and publication.

Office Supreme Court, U.S.
FILED
MAY 13 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 918

EVANSTON CAB CO., a corporation; SKOKIE RED TOP CAB CO., a corporation; LINCOLNWOOD RED TOP CAB CO., a corporation, *Petitioners,*

vs.

CITY OF CHICAGO, a municipal corporation; YELLOW CAB CO., a corporation; CHECKER TAXI CO., INC., a corporation; FLASH CAB CO., a corporation; PUBLIC TAXI SERVICE CO., a corporation; ABERNATHY TAXI ASSOCIATION, INC., a corporation; SOUTH SIDE CAB CO., a corporation; HIGHLAND CAB COMPANY, INC., a corporation; COMMERCIAL CAB CO., a corporation; BERTEL W. DAIGRE; AMERICAN UNITED CAB ASSOCIATION, an unincorporated association, JACK TAYLOR, individually, and as President of the Defendant American United Cab Association; PETE BARBERO, individually and as Secretary of the Defendant American United Cab Association; JOHN C. MELANIPHY; JAMES Y. CARTER; RAY SIMON; and THOMAS J. COONEY, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS YELLOW CAB COMPANY AND CHECKER TAXI COMPANY, INC., IN OPPOSITION TO CERTIORARI.

HOWARD ELLIS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 918.

EVANSTON CAB CO., ET AL.,

Petitioners,

vs.

CITY OF CHICAGO, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS YELLOW CAB COMPANY AND CHECKER TAXI COMPANY, INC., IN OPPOSITION TO CERTIORARI.

SUPPLEMENTAL STATEMENT.

On April 20, 1964, a month after the instant petition was filed, this Court dismissed an appeal involving the same Chicago taxi ordinance that is assailed by petitioners in this case. *Yokes v. City of Chicago*, 28 Ill. 2d 475, *appeal dismissed per curiam*, 32 U. S. Law Week 3368 (No. 855, 1963 Term). The appellants in *Yokes* were cab driver employees of the very petitioners here, who were convicted for operating in Chicago without city taxi licenses, in violation of the ordinance.

In affirming the convictions, the Illinois Supreme Court sustained the ordinance as a valid police power measure (28 Ill. 2d at 478-82), and rejected the identical claim petitioners now urge under their second "Question Presented,"[1] *i.e.*, that the ordinance discriminates against taxi carriers based outside of Chicago and thus infringes Fourteenth Amendment due process and equal protection (petition, pp. 2, 19-30). This Court dismissed the appeal from that judgment "for want of a substantial federal question." 32 U. S. Law Week 3368.

Petitioners here, in addition to re-arguing the Fourteenth Amendment claim rejected in *Vokes, supra*, contend that the anti-trust laws are violated by the ordinance's restriction precluding non-city taxicabs from picking up passengers at O'Hare Airport except at the passenger's specific request (petition, pp. 2, 7-19). O'Hare Airport is within Chicago's city limits. Petitioners allege that this provision became law as the result of a "conspiracy" among the respondents to restrict or eliminate competition; they also contend that passengers going to and from O'Hare are in interstate commerce, for anti-trust law purposes.

The Court of Appeals affirmed dismissal of the complaint (325 F. 2d 907), on authority of the Illinois Supreme Court's decision in *Vokes v. City of Chicago, supra*, and this Court's decision in *United States v. Yellow Cab Co.*, 332 U. S. 218.

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1. Indeed, petitioners' second "Question Presented" (petition, p. 2) and their entire argument in support of it (petition, pp. 19-30) appear to have been reproduced verbatim from the Jurisdictional Statement (pp. 3, 8-26) in *Vokes v. City of Chicago* (No. 855).

QUESTION PRESENTED

Since this Court has so recently decided in *Yokes, supra*, that there is no substance to the identical claim of Fourteenth Amendment violation now urged under petitioners' second "Question Presented," we consider that question authoritatively closed and not in the case.

As for the other "Question Presented" by the petition (whether taxi riders to and from O'Hare Airport are in interstate commerce within the anti-trust law context), we believe the Court could neither reach nor resolve such question without *first answering affirmatively* the following question that is critical to petitioners' case, but which they wholly ignore:

> Does the complaint state a cause of action under the anti-trust laws, in light of this Court's holding in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U. S. 127?

REASONS FOR DENYING THE WRIT

The court below chose to test its determination of no anti-trust cause of action on the holding in *United States v. Yellow Cab Co.*, 332 U. S. 218, that passengers hiring local taxis before or after rail journeys are not in interstate commerce. Petitioners now seek certiorari on the plaint that *Yellow Cab* should be overruled.

We submit *Yellow Cab* was correctly decided, is sound law today, and has not been infringed by any subsequent case either in the labor field, the anti-trust field, or indeed, in any other field. Petitioners rely solely on labor law decisions (petition, pp. 7-19); but as the opinion below demonstrates, such cases are neither factually nor legally comparable to this one, and are thus inapplicable here (petition appendix, pp. 6-9). Petitioners cannot and do

not claim any conflict among circuits on this holding, nor do they show any similar ground or feature important enough to warrant certiorari.

But we believe there is another and even stronger reason why certiorari should be denied. The judgment below is not only supported by the commerce definition of *Yellow Cab*, but is also supported, independently and conclusively, by an unbroken line of decisions by this Court holding invulnerable to anti-trust assault any governmental action or legislation restraining, or even monopolizing, trade or commerce, *and* any efforts (concerted or otherwise) to influence the enactment or enforcement of such legislation. *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U. S. 127; *Parker* v. *Brown*, 317 U. S. 341; *United States* v. *Rock Royal Co-op.*, 307 U. S. 533; *Olsen* v. *Smith*, 195 U. S. 332; *Standard Oil Co.* v. *United States*, 221 U. S. 1; *Fletcher* v. *Peck*, 6 Cranch 87. Petitioners could not prevail here without overruling this line of cases, *plus* the *Yellow Cab* ruling.

The *Noerr* case, *supra*, most recent of the line, highlights the fatal weakness of petitioners' claim. There, several trucking companies complained that a group of railroads and others allied with them had violated the Sherman Act by conspiring to procure the adoption of laws and law enforcement practices destructive of the truckers' interstate business. The allegations were even stronger than petitioners' charges here, for it was alleged that the railroads had engaged in "vicious, corrupt, and fraudulent" practices designed solely to destroy the truckers; among other acts, the railroads were charged with having successfully enlisted the aid of the Governor of Pennsylvania to veto legislation favorable to the truckers. (365 U. S. at p. 129.)

This Court, in unanimously rejecting the truckers' complaint, held that combinations or conspiracies to influence

the passage or enforcement of laws restraining commerce are not within the ban of the Sherman Act. The Court declared (365 U. S. at pp. 135-36):

> "It has been recognized, at least since the landmark decision of this Court in *Standard Oil Co.* v. *United States* [221 U. S. 1], that the Sherman Act forbids only those trade restraints and monopolizations that are created or attempted by the acts of 'individuals or combinations of individuals or corporations.' Accordingly, it has been held that *where a restraint upon trade or monopolization is the result of valid governmental action, as opposed to private action, no violation of the Act can be made out.* . . .
>
> "We think it equally clear that the Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly." (Emphasis added.)

This holding, we submit, is precisely applicable here. The sum of petitioners' complaint is that respondents combined and conspired to procure passage of a law restricting the operations at O'Hare Airport of taxis not licensed or based in Chicago.[2] But O'Hare is within the city limits of Chicago (petition appendix, pp. 1-2), and is therefore subject to Chicago's police power regulation; the

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2. It of course makes no difference that the governmental action here questioned is in the form of an ordinance rather than a State enactment; it is "well settled that municipal ordinances adopted under state authority constitute state action . . . ." *Lovell* v. *Griffin*, 303 U. S. 444, 450; *Cuyahoga River Power Co.* v. *Akron*, 240 U. S. 462; *Home Tel. & Tel. Co.* v. *Los Angeles*, 227 U. S. 278. Also without significance is the fact that the complaint names the City and its officials as co-defendants; this adds nothing more to the complaint than the naming of the Governor of Pennsylvania as a co-defendant would have in the *Noerr* case. *See Parker* v. *Brown*, 317 U. S. 341; *Olsen* v. *Smith*, 195 U. S. 332; *Tennen* v. *Brandhove*, 341 U. S. 367.

restriction against pick up of passengers there by non-Chicago cabs is no more stringent (and in fact is much less so) than the similar prohibition prevailing throughout the rest of the city (see Municipal Code of Chicago, ch. 28, §§ 28-2, 28-3).

The city-wide prohibition against petitioners' cabs was upheld as a valid police power regulation in the *Yokes* case (28 Ill. 2d 475) and this Court found no substantial federal question in an appeal from that holding (32 U. S. Law Week 3368; see Statement, *supra*). Thus, the taxicab restriction here attacked has been judicially determined to be a "valid governmental action," and under *Noerr*, *supra*, "no violation of the [Sherman] Act can be made out." 365 U. S. at p. 136. See, also, *Parker* v. *Brown*, 317 U. S. 341; *United States* v. *Rock Royal Co-op*, 307 U. S. 533; *Olsen* v. *Smith*, 195 U. S. 332. Cf. *Tenney* v. *Brandhove*, 341 U. S. 367; *Fletcher* v. *Peck*, 6 Cranch 87.

The soundness of *Noerr* is signally demonstrated when mirrored against the petitioners' attempt here to nullify legislation that displeases them. In Chicago, as in most cities, taxicabs are vitally important to the public, and are accordingly licensed and subjected to rigorous legislative controls over rates, loads, financial responsibility, safety of vehicles, fitness of drivers, and many other factors. (Municipal Code of Chicago, ch. 28, §§ 28-1—28-32.) If unlicensed, non-city taxicabs could invade the city and compete with city-based cabs, the entire regulatory framework, as well as the public safety, would be seriously jeopardized. This is exactly what petitioners seek

3. The O'Hare provision of the ordinance, unlike the city-wide restriction, specifically allows non-city cabs to pick up passengers at O'Hare whenever the passenger, or his agent, has requested such a pick up by "letter, telegram or telephone." (Municipal Code of Chicago, ch. 28, § 28-28.) There is no restriction preventing non-city cabs from delivering passengers at O'Hare.

to accomplish here under the cloak of an anti-trust action, and it is precisely what the *Noerr* case (and its forerunners) forbid.

CONCLUSION

For the foregoing reasons we submit the petition for certiorari should be denied.

Respectfully submitted,

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